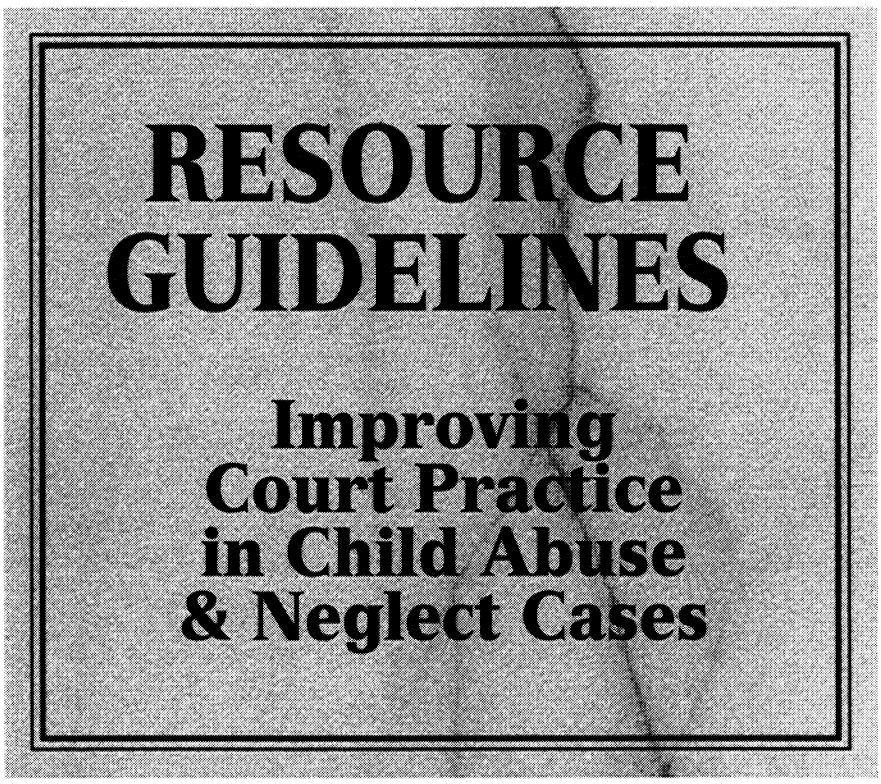
RESOURCE GUIDELINES

Improving Court Practice in Child Abuse & Neglect Cases

NATIONAL COUNCIL OF JUVENILE
AND FAMILY COURT JUDGES



NATIONAL COUNCIL OF JUVENILE
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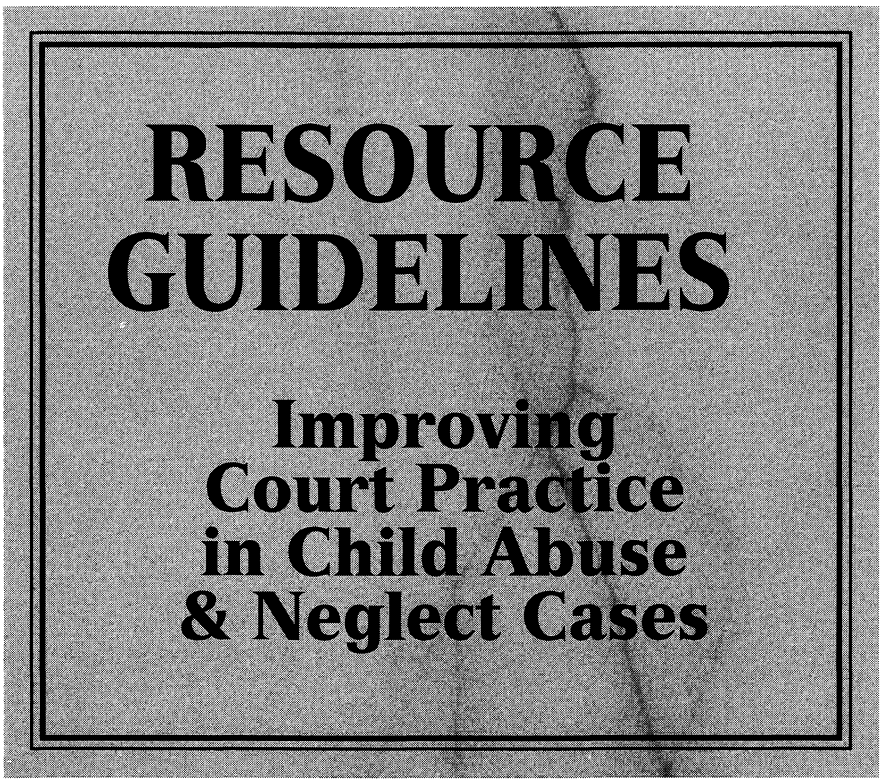
Reno, Nevada



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2

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TABLE OF CONTENTS

Table of Contents

Table of Contents

Table of Contents

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Special thanks go to Mark Hardin of the American Bar Association Center on Children and the Law and Barbara Seibel, Director of Court Services of the Hamilton County Juvenile Court in Cincinnati, Ohio, for their significant contributions to this project. These Resource Guidelines are recommended for use by judges, court personnel, social service workers, attorneys and related professionals. Readers are urged to use this information to ensure that as many children as possible have stable, caring, and supportive families, not only during their early years, but for a lifetime.

I. Introduction

I. INTRODUCTION

INTRODUCTION TABLE OF CONTENTS

A. Need for Guidelines

Victims of child abuse and neglect come before juvenile and family court judges for protection from further harm and for timely decision-making for their future. In response, judges make critical legal decisions and oversee social service efforts to rehabilitate and maintain families, or to provide permanent alternative care for child victims. These oversight responsibilities require a large portion of the court's attention, workload and resources as the reported number of child abuse and neglect cases grows each year. Public awareness of the tragedy of physical and sexual abuse of children has led to a recent explosion in court referrals. The problem has been exacerbated by poverty, the impact of drug-exposed mothers and infants, HIV Syndrome, the continuing dissolution of the family unit, and the growing recognition that child victims are often found in violent families.

Throughout the United States, child abuse and neglect proceedings in the juvenile and family courts have been transformed by new demands placed upon the courts. These demands have included escalating judicial caseloads, increasingly difficult cases, and a significant new role assigned to juvenile and family courts in abuse and neglect cases.

In the 1970's, juvenile and family courts were expected only to determine whether a child had been abused or neglected and, if so, whether the child needed to be removed from home or placed under court or agency supervision. At present, however, courts are expected to make sure a safe, permanent, and stable home is secured for each abused or neglected child. This change has been brought about by major federal foster care reform legislation, the Adoption Assistance and Child Welfare Act of 1980—*boxed at right on page 11,* (P.L. 96-272) and major revisions in state laws.

As a result of recent changes in federal and state law, juvenile and family courts now take a far more active role in decision-making in abuse and neglect cases. More complex issues are now decided in each case, more hearings are held, and many more persons are involved. To perform their expanded oversight role, courts need to understand how public child welfare agencies operate and what services are available in the community for endangered children and their families.

Unfortunately, many courts have neither the ability nor the resources to meet these new demands. Judicial caseloads have actually risen at the same time that the number of issues, hearings, and parties have increased. As a result, in many jurisdictions, the quality of the court process has gravely suffered. Hearings are often rushed in child abuse and neglect cases. There are also frequent and unfortunate delays in the timing of hearings and decisions, causing children to grow up without permanent homes. Many courts know little about relevant agency operations or services. All too often, child welfare agency employees spend unnecessary hours waiting for court hearings while they could be "out working in the field."

The nation's juvenile and family courts need a clear description of ways to fulfill their responsibilities in child abuse and neglect cases. This description must explain the decision-making process in these cases and describe resources needed to create such a process.

What is needed is a clear vision of juvenile and family court procedures in child abuse and neglect cases, based upon the experiences of demonstration courts which already have been relatively successful in performing their new role. The new vision must be realistic, clarifying the resources necessary to meet 21st century demands.

The increased responsibilities and resultant administrative tasks which P.L. 96-272 requires of judges are taxing already overburdened people and systems. Juvenile and family court judges are the gatekeepers of our nation's foster care system. They must ultimately decide whether a family in crisis will be broken apart and children placed in foster care or whether placement can be safely prevented through the reasonable efforts of our social service system.

Duties Imposed by the Adoption Assistance and Child Welfare Act of 1980 (P.L. 96-272) on State Juvenile and Family Courts

Federal Requirements Applicable to State Juvenile and Family Courts:

- Evaluation of reasonableness of services to preserve families.
- Periodic review hearings in foster care cases.
- Adherence to deadlines for permanency planning decisions.
- Procedural safeguards concerning placement and visitation.

Indirect Impact on Courts of Federal Requirements:

- More termination of parental rights cases.
- More adoption, custody, and relative placement cases.

Some Additional Duties Often Imposed on Juvenile and Family Courts By State Statute or Court Rule

Everything Specified by Federal Law, Plus the Following:

- Prompt review of emergency placements.
- Strict deadlines for adjudication (trial).
- Strict deadlines for disposition.
- Oversight of agency case planning.
- Periodic review in all cases.
- Stricter deadlines for permanency planning decisions.
- Procedural safeguards stricter than those specified by federal law and provided through the courts.
- More termination of parental rights proceedings due to updated grounds.
- Oversight of agency efforts to place abused or neglected children with relatives.

Source: M. Hardin, Judicial Implementation of Permanency Planning Reforms: *One Court That Works (ABA 1992).*

If reasonable efforts to preserve or reunify families are not evaluated and ensured through effective judicial review, then families and children are unnecessarily harmed.

Note: Additional information on P.L. 96-272 is provided in Appendix C. "Improving the Implementation of the Federal Assistance and Child Welfare Act of 1980," by the Hon. Leonard P. Edwards, superior court judge in Santa Clara County, California.

B. Purpose of Guidelines

The purpose of these resource guidelines is to set forth the essential elements of properly conducted court hearings. The guidelines describe the requirements of juvenile and family courts in fulfilling the role now placed upon them by federal and state laws. These guidelines also describe how court calendars can be efficiently managed to achieve efficiency and avoid delays; explain the court staffing and organization necessary to make the judicial process run smoothly; and clarify costs associated with such reforms.

These guidelines are meant to influence future administrative and funding decisions concerning juvenile and family courts. They are intended to help correct the gaping discrepancies that presently exist between legislative demands and judicial resources for child abuse and neglect cases.

C. Scope of Guidelines

These guidelines set forth the elements of a high-quality judicial process in child abuse and neglect cases. They specify the necessary elements of a fair, thorough, and speedy court process in cases brought for the protection of abused and neglected children. The guidelines cover all stages of the court process, from the preliminary protective hearing until juvenile and family court involvement has ended. These guidelines assume that the court will remain

involved until after the child has been safely returned home, placed in a new, secure and legally permanent home — whether through adoption or legal custody — or has reached adulthood.

These guidelines address the process itself rather than substantive law. They do not offer criteria for state agency or court intervention in the lives of families, but are limited to matters of judicial procedure, organization, staffing, and finances. The guidelines do not attempt to define child abuse and neglect, describe what kinds of child abuse or neglect justify a child's removal from home, specify when children can safely be returned home, or set forth suggested grounds for the termination of parental rights.

Instead of focusing on the criteria for judicial decisions, these guidelines set forth the characteristics of each hearing itself. The guidelines outline needed procedural steps for each hearing, describe key decisions that must be made, specify when each hearing needs to take place, and the role of each participant.

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The guidelines also explain the necessary preconditions for conducting thorough, meticulous, and timely hearings. For example, courts need certain administrative supports to effectively manage the pace of litigation. To conduct proper hearings, courts must meet certain personnel requirements, provide necessary types of equipment, have adequate facilities and work space, have workable caseloads, and provide for diligent advocacy for the parties. These guidelines clarify such requirements with specific reference to child abuse and neglect litigation in juvenile and family courts.

These guidelines were not developed in a vacuum, but resulted instead from the working experience of many courts, most notably the Hamilton County Juvenile Court in Cincinnati, Ohio. Throughout the deliberations resulting in the final document, Hamilton County experience was observed, measured and documented to provide a base of reality for understanding both the need for good practice and the requirements necessary to assure it can occur.

Technical information is provided in Appendix A - Time Resource Calculations to further guide court administrators and judges estimating docket time, judicial time and ancillary court staff time necessary to implement the Resource Guidelines. Estimates are provided of the annual time requirements for new cases from initial disposition through ongoing case review to termination.

D. Key Principles Underlying Guidelines

The most basic principle underlying these guidelines is the need for comprehensive and timely judicial action in child welfare cases. These guidelines recognize the need to assure safe and permanent homes for abused or neglected children and the prominent role of the judiciary in this process. Other key principles include:

1. Avoiding Unnecessary Separation of Children and Families

When the state is forced to intervene on behalf of abused and neglected children, it is not enough to protect them from immediate harm. When the state is deciding whether to place children outside the home, it must take into account not only the children's safety, but also the emotional impact of separation. Throughout its involvement, the state must strive to ensure that children are brought up in stable, permanent families, rather than in temporary and unstable foster placements under the supervision of the state.

The need to provide permanent homes for abused or neglected children is the fundamental principle behind the Adoption Assistance and Child Welfare Act of 1980.[1] The obligation to achieve permanency is also set forth in most

states' juvenile court acts and laws authorizing the termination of parental rights.

Statutory provisions designed to achieve permanency for abused or neglected children are based on several widely accepted principles of child development. First, many mental health professionals believe that stable and continuous care givers for children are very important to normal emotional growth.[2] According to these authorities, children need secure and uninterrupted emotional relationships with adults who are responsible for their care. Repeatedly disrupted placements and relationships can interfere with a child's ability to form close emotional relationships after reaching maturity.

Second, children need the security of having parents committed to their care. The lack of parents who provide unconditional love and care can profoundly insult a child's self-image.[3]

Third, having a permanent family adds predictability to a child's life. Foster care, with its inherent instability and impermanence, can impose great stress on a child. Weathering the normal situational changes of childhood in a permanent family enables a child to envision a more secure future.[4]

Fourth, the child-rearing competence of autonomous families is always superior to that of the state.[5] Parents are likely to be capable of making the best, most timely decisions for a child, while decision-making concerning a child in state-supervised foster care can often be fragmented and inconsistent.

If it is important that children be raised in stable and secure families, it follows that the state should, when possible, protect the child without removing the child from home. Preventing unnecessary removal also helps to preserve the constitutional right of families to be free from unwarranted state interference.

To prevent unnecessary removal of children from their homes, the state must take strong, affirmative steps to assist families. Toward this end, federal law requires child welfare agencies to make "reasonable efforts" to prevent the necessity of foster placement.[6] States have reinforced this federal requirement through state statutes, regulations, and written policies.

2. Reunification

Achieving permanent homes for abused and neglected children also includes working toward the reunification of families that have had to be separated. When there has been no safe way to prevent the need for foster placement, states must make reasonable efforts to bring about the safe reunification of children and their families.[7] States have spelled out this obligation through state statutes, regulations, and policies. Among the requirements are the following: individual written case plans specifying state efforts to reunify families; placement in the least disruptive setting possible; actual services pursuant to the case plans; and periodic review of each case to ensure timely progress toward reunification.

To prevent unnecessary removal of children from their homes, the state must take strong, affirmative steps to assist families.

3. When Reunification is Not Feasible

Of course, some children in foster care cannot safely be returned home in spite of the state's best efforts to assist the family. The best state efforts to assist families do not always improve parental behavior or enable parents to care for their children. In cases where family reunification is not feasible, the search for a new, permanent home for the child supersedes that as a goal.

Federal law makes it clear that permanent homes are to be arranged for children unable to be reunited with their families within a reasonable time.[8] State laws and policies on such issues as case review, termination of parental rights, custody, adoption of children with special needs, and adoption subsidy reinforce this concept.

4. The Need to Make Timely Decisions in Child Abuse and Neglect Litigation

Court delays can be a major obstacle to achieving permanency for abused and neglected children. Even where the pace of litigation is tightly managed, decision-making in child abuse and neglect cases can extend for many months. When juvenile or family court proceedings are allowed to proceed at the pace of other civil litigation, children spend years of their childhood awaiting agency and court decisions concerning their future.

Children have a very different sense of time from adults. Short periods of time for adults seem interminable for children, and extended periods of uncertainty exacerbate childhood anxiety. When litigation proceeds at what attorneys and judges regard as a normal pace, children often perceive the proceedings as extending for vast and infinite periods.

When juvenile or family court proceedings are allowed to proceed at the pace of other civil litigation, children spend years of their childhood awaiting agency and court decisions concerning their future.

The passage of time is magnified for children in both anxiety levels and direct effect. Three years is not a terribly long period of time for an adult. For a six-year-old, it is half a lifetime, for a three-year-old, it is the formative stage for trust and security, and for a nine-year-old, it can mean the difference between finding an adoptive family and failing to gain permanence because of age. If too much time is spent in foster care during these formative years, lifetime problems can be created.[9]

Court delays caused by prolonged litigation can be especially stressful to abused and neglected children. The uncertainty of not knowing whether they will be removed from home, whether and when they will go home, when they might be moved to another foster home, or whether and when they may be placed in a new permanent home are frightening.

The law requires courts to make timely decisions for abused or neglected children. Under federal law, a decision concerning the permanent placement of each child is to take place within 18 months of when a child is first placed into foster care.[10] Many states set stricter deadlines. To be able to meet such deadlines in making a permanent placement decision for a child, the earlier stages of the litigation must also occur in a timely manner.

Combatting delays in juvenile court, where there are many stages to the litigation and many participants in the process, can be more difficult than in other courts. Yet efforts to speed litigation in child welfare can be successful. There are great variances in court delays from jurisdiction to jurisdiction, and while differences in caseloads can be the cause, docketing practices and case flow management have their effect. Some courts have very successfully used case flow management to reduce delays in child welfare litigation. To do so, however, the courts have had to make timely litigation a high priority.

5. The Oversight Role of the Juvenile and Family Court

Child welfare cases impose a special obligation on juvenile and family court judges to oversee case progress. Case oversight includes two requisites: state fulfillment of its responsibilities and parental cooperation with the state.

The oversight obligation of judges in child welfare cases is necessary because special circumstances apply: (1) court involvement in child welfare cases occurs simultaneously with agency efforts to assist the family; (2) the law assigns to the juvenile court a series of interrelated and complex decisions that shape the course of state intervention and determine the future of the child and family; and (3) because of the multitude of persons dealing with the child and family, there is increased potential for delay and error.

Unlike most litigation, child abuse and neglect cases deal with an ongoing and

changing situation. In a criminal case, by contrast, the trial usually deals with whether specific criminal acts took place at a specified time and place. But in a child welfare case, the court must focus on agency casework and parental behavior over an extended period of time. In making a decision, the court must take into account the agency's plan to help the family and anticipated changes in parental behavior. At the same time, the court must consider the evolving circumstances and needs of each child.

The juvenile court or family court judge is required to remain actively involved over a period of time in child welfare litigation. The judge does not simply make a one-time decision concerning the care, custody, and placement of a child, but rather makes a series of decisions over time. In effect, step-by-step the judge must determine how best to assure the safe upbringing of the child, and that the child is eventually placed in a safe and permanent home.

The decisions that must be made in child welfare litigation are not merely litigation management decisions, but decisions governing the lives and futures of the parties. For example, over time a court may order, in a single child welfare case: the child's emergency placement into shelter care; the child's placement into extended foster care; the parents' participation in treatment; the parents' submission to evaluation or testing; the parents' participation in a revised treatment plan; a schedule for parent-child and sibling visitation; termination of parental rights; and the child's adoption. The length, scope, and continuous nature of these determinations involves the court in the lives of the parties and the operations of the agency to a degree unlike other court cases.

All decisions in a child welfare case are interrelated. Just as the findings at the adjudication (trial) shape the disposition (the decision concerning the child's custody, placement, and services), subsequent review hearings typically focus on how the parties have reacted to the court's decision at disposition. Termination of parental rights proceedings rely heavily upon the court's findings during all earlier stages of the case.

In child welfare cases, the judge is not merely the arbiter of a dispute placed before the court, but, rather, sets and repeatedly adjusts the direction for state intervention on behalf of each abused and neglected child. These decisions encompass not only the issues of custody, placement, and visitation, but also, in many states, the case plan for the child, including exactly which services are to be provided to the child and family.

Combatting delays in juvenile court, where there are many stages to the litigation and many participants in the process, can be more difficult than in other courts.

Because its decisions in child welfare cases are interlocking and sequential, the court performs a more managerial and directive function than in other litigation. Court decisions shape agency actions by identifying dangers and defining the agency's approach to each case, and related delivery of services to the child and family. Regular court review of each case refines and redefines agency involvement. Because of the nature of this decision-making in child welfare cases, the judge has a distinct impact on the course of agency work with each family.

Each of the key principles underlying these Resource Guidelines emphasizes the tremendous responsibility undertaken by judges hearing child abuse and neglect cases. This judicial responsibility gives rise to a number of general issues involved in court organization and operation. The most pertinent of these general issues are examined in the following section.

E. Endnotes

1. Public Law 96-272 (enacted June 17, 1980) repealed the old foster care provisions of Title IV-A of the Social Security Act, added a new Title IV-E (Foster Care and Adoption Assistance), and amended Title IV-B (Child Welfare Services) of the Social Security Act, see 42 USC §§620 et seq. and §§ 670 et seq.

2. See, e.g., J. Goldstein, A. Freud and A. Solnit, Beyond the Best Interests of the Child (New York: Free Press, Macmillan 1973); Leon A. Rosenberg, "The Techniques of Psychological Assessment as Applied to Children in Foster Care and Their Families," Foster Children in the Courts, 550-74 (Boston: Butterworth Legal Publishers, 1983); M. Rutter, Maternal Deprivation Reassessed, 179-97 (1981).

3. See David Fanshel and Eugene B. Shinn, Children in Foster Care: A Longitudinal Investigation, 479-82 (New York: Columbia University Press, 1978); Michael Wald, State Intervention on Behalf of "Neglected" Children: Standards for Removal of Children from Their Homes, Monitoring the Status of Children in Foster Care, and Termination of Parental Rights, 28 Stanford Law Review 623, 645 (1976); E. Weinstein, The Self-Image of the Foster Child (1960).

4. See V. Pike, et al., Permanent Planning for Children in Foster Care: A Handbook for Social Workers, 1-2 (Portland: Regional Research Institute for Human Services, Portland State University, 1977); M. Allen and J. Knitzer, Children Without Homes: An Examination of Public Response to Children in Out-of-Home Care, 41 (Washington, D.C.: Children's Defense Fund, 1978).

5. See J. Goldstein, A. Freud and A. Solnit, supra, at 51-52; I. White, Federal Programs for Young Children, Review and Recommendations (1973); Institute for Judicial Administration/American Bar Association Juvenile Justice Standards Project, Standards Relating to Abuse and Neglect, Standard 1.1 (Washington, D.C.: American Bar Association, 1981); Michael Wald, State Intervention on Behalf of "Neglected" Children: A Search for Realistic Standards, 27 Stanford Law Review 985, 989-1000 (1975).

6. See 42 USC §671(a)(15); Debra Ratterman, G. Diane Dodson and Mark A. Hardin, Reasonable Efforts to Prevent Foster Placement: A Guide to Implementation 2d ed (Washington, D.C.: American Bar Association, 1987).

7. See 42 USC §§671(a)(15), 427(a)(2)(C).

8. See 42 USC §§427(a)(2)(C), 675(1)(B), 675(5)(B), 675(5)(C).

9. Pat O'Brien, Youth Homelessness and the Lack of Adoption Planning for Older Foster Children: Are They Related?, Adoptalk Newsletter, North American Council on Adoptable Children, 1821 University Avenue, Suite N-498, St. Paul, Minnesota 55104, (612) 644-3036.

10. See 42 USC § 675(5)(C); Marylee Allen, Carol Golubock, and Lynn Olson, "A Guide to the Adoption Assistance and Child Welfare Act of 1980," Foster Children in the Courts, 575-611 (Boston: Butterworth Legal Publishers, 1983).

II. General Issues

GENERAL ISSUES TABLE OF CONTENTS

A. Authority of the Juvenile and Family Court and the Role of the Judge

Juvenile and family courts have the responsibility to protect the rights of parties before the court and ensure safe, permanent homes for abused and neglected children. Among the most pressing judicial concerns in abuse and neglect cases are the principles of treatment, rehabilitation, family preservation, and permanency planning.

Child protection agencies, service providers, guardians ad litem and attorneys all play critical roles in child abuse and neglect cases. For the child welfare system to function in the best interests of children, it is essential that all these major participants discharge their responsibilities in an effective and responsible manner. Ultimately, however, children are placed pursuant to court orders. Therefore, the juvenile court has the responsibility to hold the entire system accountable. To discharge this responsibility, the juvenile court must have authority commensurate with the task assigned.

Juvenile and family court judges can be leaders in their communities, state capitals, and at the national level to improve the administration of justice for children and families. Judges can be active in the development of policies, laws, rules and standards by which the courts and their allied agencies and systems function. Judges can inform the community of the unique and diverse needs of troubled children and their families. Judicial responsibility for impartiality does not preclude judicial leadership. The very nature of the office mandates that the judge act as an advocate and convener to assure that needed services for children and families are available and accessible.

Judges should encourage the continuing education of all who serve in the juvenile and family court system, including themselves. Professional training topics should encompass cultural competence and gender fairness, as well as interdisciplinary education among all court-related disciplines.

Juvenile and family court judges must have the authority by statute or court rule to order, enforce and review delivery of services and treatment for children and families. The judge must be prepared to hold all participants accountable for fulfilling their roles in the court process and the delivery of services.

State laws differ concerning the authority of juvenile and family courts to determine what services are to be provided to abused and neglected children and their families, to specify where foster children are to be placed, to decide the terms of agency case plans, to resolve disputes between different public agencies, and to set the terms of visitation. None of these should be shielded from judicial oversight, because each has constitutional overtones. Without procedural protection, decisions touching on these issues could be instruments of discrimination or oppression.

The following are some of the possible bases for a court to revise or overturn agency decisions concerning services, case plans, child placement, interagency disputes, or visitation:

(1) Agency action is contrary to law.

(2) Agency recommendations are not in accord with the evidence presented at the hearing. The proposed disposition will not adequately address the abuse or neglect that the court found the parents to have committed.

(3) Evidence before the court demonstrates the futility or inappropriateness of action proposed by the agency.

The court must insist that the proposed plan or disposition is complete and, when it is not, must direct the agency to respond. The court's oversight role also includes the application of sanctions against parties which fail to appropriately respond to court orders.

B. Calendaring for One Family-One Judge

In many courts, child abuse and neglect cases are assigned to a specific judge or judicial officer at the time the case is first brought to court, and this initial judge conducts all subsequent hearings, conferences, and trials. Courts in which one family is assigned to one judge throughout its court experience are said to use "direct calendaring." By contrast, courts with "master calendaring" can reassign cases to different judges at different stages of the case. Direct calendaring (also known as "individual calendars") is particularly suitable for abuse and neglect cases because this type of litigation typically involves complex hearings extending over a long period of time. Direct calendaring enables judges or judicial officers to become thoroughly familiar with the needs of children and families, the efforts over time made to address those needs, and the complexities of each family's situation.

A unique judicial perspective is developed by a single judge hearing all matters related to a single family's court experience. Knowledge gained of family circumstances and responses to court orders may increase the quality of government's response to family crises. This long-term perspective identifies patterns of behavior exhibited over time by all parties involved in a case, preventing a judge from too heavy a reliance on social service agency recommendations. In states where judges are expected to approve and review agency case plans, a single judge provides consistency and continuity, developing a case plan in a logical, step-by-step manner. A judge who has remained involved with a family is more likely to make decisions consistent with the best interests of the child.

Direct calendaring allows the court to speak with a single voice and convey consistent messages and expectations to the parties. Parties can rely on the court's direction without concern that a different judge at the next hearing will interpret the case differently. This can prevent families from feeling that strangers who know nothing about them are controlling their lives, enabling families to anticipate a judge's response to their future conduct.

> Direct calendaring gives judges a sense of ownership in each case.

The court's long-term, detailed case knowledge can prevent parties from resurrecting previously rejected arguments. It also prevents parents from repeating excuses for lack of progress and wasting the court's valuable time and the child's priceless youth. Because of the court's continuous involvement in each case, the judge can quickly review files, agency reports, and case plan changes before each hearing, allowing for informed decisions on case scheduling, both in terms of frequency and length of time allotted for hearings.

Direct calendaring gives judges a sense of ownership in each case. When a judge knows that his or her involvement will extend beyond the immediate hearing, the judge is more likely to invest the time necessary to gather complete information, to assess the results of decisions, and to develop a working relationship with all the parties.

C. Case Flow Management

Court administrators recently have developed new techniques to reduce litigation delays, collectively known as "case flow management." Effective case flow management is essential in abuse and neglect cases because it is essential to successful permanency planning. Permanency planning means achieving permanent placements for abused or neglected children within a relatively short period of time, either through their safe return home, or their placement in a new, legally secure permanent home. Sound case flow management by juvenile and family courts is needed to assure that delays in the court process do not interfere with the timely achievement of permanency. Case flow management also helps the court monitor the agency to make sure the case is being moved diligently and decisively toward completion.[1]

The following are the basic tools of case flow management: (1) judicial leadership and commitment; (2) standards and goals; (3) a monitoring and information system; (4) scheduling for credible trial dates; and (5) judicial control of continuances.[2] An additional key characteristic of case flow management in child abuse and neglect cases is the use of direct calendaring.

1. Judicial Commitment and Leadership

The court must demonstrate an unmistakably strong commitment to timely decisions in child abuse and neglect cases. It must communicate to its own employees, the attorneys practicing before it, and the child welfare agency that timely decisions are a top priority. It must conduct and participate in educational programs concerning the elimination of delays. The court also must make necessary organizational adjustments related to delays, in cooperation with court and agency staff. The court must design explicit processes to ensure timely hearings and must make sure they are implemented by all judges and administrative staff.

2. Standards and Goals

Specific and detailed timetables for the different stages of litigation are essential to an effective delay-reduction program. There must be explicit deadlines for each preliminary protective, adjudication, disposition, review, and permanency planning hearing. There must be specific deadlines for the completion of termination of parental rights proceedings. These limits should be incorporated into court rules and made legally binding upon the court.

Serious breaches of court deadlines can be brought to the attention of the presiding judge.

3. Monitoring and Information System

Court staff can monitor the timing of court proceedings in several ways. They may use tickler files to help the judge or judicial officer schedule hearings within required deadlines. Court staff can contact agency staff to remind them of judicial deadlines for the filing of reports. Serious breaches of court deadlines can be brought to the attention of the presiding judge.

Court staff should operate a computerized data system capable of spotting cases that have been seriously delayed, and capable of measuring court progress in case flow management. This information system should maintain statistics on the length of time from case filing to case closure. The system should also monitor the length of key steps in the litigation, such as petition to adjudication, petition to disposition, and termination of parental rights petition to final written findings of fact and conclusions of law. These statistics should be periodically reported and used to evaluate the effectiveness of case flow management.

4. Scheduling for Credible Court Dates

In the great majority of cases, the court should hold hearings on the date that they are originally scheduled. To make this possible, attorneys and parties must understand that trial dates are firm. There often must be pretrial conferences prior to contested hearings to resolve preliminary issues and to arrive at a time estimate for the hearing. There should be no major interruptions in contested hearings. It should be unusual for a contested hearing not to be completed on the day scheduled or within a few days thereafter.

There should be no major interruptions in contested hearings.

The early appointment of counsel and other representation is another important factor in scheduling firm trial dates. Attorneys for parents and children must be present and actively involved in the very first court hearing and all hearings thereafter. Many jurisdictions substantially delay adjudication and disposition because of delays in the appointment of counsel.

Another way to keep hearings on schedule is to set hearing dates in open

court with parties and advocates present to receive a written court order specifying the date and time of the next hearing.

The court must have a firm and effective policy on continuances.

The order should also specify actions to be taken by each party, including social service personnel, and list appropriate timelines. The order should be written in easily understandable language so that all parents and other nonlawyers understand clearly what actions are required before the next hearing.

5. Court Control of Continuances

The court must have a firm and effective policy on continuances. Continuances should not be allowed because hearing dates prove inconvenient for attorneys and parties. Continuances should be granted only when attorneys or parties are ill; essential witnesses cannot be located; or service of process has not yet been completed. Neither should continuances be granted based upon the stipulation of the parties. Administrative personnel should not be authorized to grant continuances. The reason for any continuance should be included in the court record. As the result of these procedures, it should be difficult or impossible to avoid court continuance policies.

One of the consequences of a firm policy on continuances is better use of judicial resources. With strong continuance policies, pretrial conferences, and calendar calls in contested matters, few hearings should need to be rescheduled at the last minute.

With a strict policy against continuances and an adequate number of judges, all hearings can be set for a time certain. This includes even the most routine matters such as case review hearings. When cases are set for a time certain, typical waiting time can be less than 20 minutes, with hearings occasionally being delayed up to an hour or more. Reduction of waiting time for agency caseworkers and other witnesses can result in major reductions in government expenditures.[3]

D. Judge-Supervised Judicial Officers

Whenever possible, child abuse and neglect cases should be heard by a judge, even in jurisdictions in which judicial resources are at a premium. In the majority of jurisdictions throughout the nation, however, judges have the authority to appoint judge-supervised judicial officers to preside over hearings and make decisions concerning cases assigned to them. Judicial officers typically serve at the pleasure of the judge who appointed them, and their decisions are subject to review by a judge. Such judicial officers are often referred to as "associate judges," "magistrates," "referees," "special masters," "hearing officers," or "commissioners."

When judge-supervised judicial officers are employed, the principle of one family-one judge must still be maintained. Cases should not be shifted between judges and hearing officers at different stages of the proceedings. If cases can be appealed from the hearing officer to the judge, they should not be retried by the judge. Rather, the judge should promptly review a tape or transcript of the hearing. Retrials waste judicial time, delay case decisions, and undermine the principle of one family-one judge.

The use of judge-supervised judicial officers can be an appropriate alternative when judges, particularly in large urban areas, are faced with increasing child abuse and neglect caseloads. The use of judicial officers can provide several advantages. First, the use of judicial officers is cost-effective, significantly increasing the staffing resources needed to move these cases through the system in a timely manner with close judicial oversight. By reducing hearing costs, the use of judicial officers allows a court system to devote more time to each case, resulting in lower caseloads, fewer delays and closer monitoring of cases.

Second, the use of judicial officers in neglect and abuse cases can help achieve greater consistency in case processing and outcomes. One administrative judge can appoint judicial officers who share consistent views and phi-

losophies. That administrative judge can further develop principles, guidelines and policies governing the handling of cases within the court system.

Third, the use of judicial officers may improve case flow management within a court. When independent judges hear cases, and case docketing and court administration is weak, it can be impossible to establish uniform and efficient practices to combat delays.

Finally, judge-supervised judicial officers can develop greater specialization and expertise than can realistically be developed by many judges because they can be appointed to exclusively or predominately hear child abuse and neglect cases and can be selected as a result of their interest and expertise in this specialized area of the law.

Each party must be competently and diligently represented in order for juvenile and family courts to function effectively.

E. Access to Competent Representation

Juvenile and family courts should take active steps to ensure that the parties in child abuse and neglect cases have access to competent representation. Attorneys and other advocates determine, to a large extent, what information is presented to a judge. Each party must be competently and diligently represented in order for juvenile and family courts to function effectively.

1. Attorneys

Attorneys present information to the court through opening statements, questions, and answers. A judge must receive complete and accurate information in order to make a well-informed decision. This will not occur unless attorneys are competent and diligent. Counsel must thoroughly investigate the case and prepare a list of issues and questions in advance of court hearings to ensure that the judge has complete and accurate information. Much of the initiative for decisions and actions comes from attorneys in the form of motions and petitions. If attorneys fail to take timely action to correct errors or to resolve cases, the quality and timeliness of the court's decision-making suffers.

Throughout the United States, there is an extraordinary range in the quality of counsel in child abuse and neglect cases. The quality of counsel ranges from the worst inactivity and incompetence (e.g., attorneys who meet their clients only shortly before hearings) to attorneys with a high degree of dedication and skill.

Courts have a great ability to positively influence the quality of counsel. Courts can set prerequisites for appointments, including requirements for experience and training. Some courts require attorneys to attend training and "second chair" cases before taking an appointment to a child abuse or neglect case. Some courts have implemented videotaped training sessions to speed the eligibility of attorneys for appointments. Courts also can set specific standards for how parents and children should be represented, including the obligation to continue representation through all stages of the case. Courts can impose sanctions for violation of their standards, which might include the termination of an attorney's appointment to represent a specific client, the denial of further appointments, or even fines or referral to the Bar committee for professional responsibility.

It is necessary to provide reasonable compensation for such improvements. Juvenile and family courts should urge state legislatures and local governing bodies to provide sufficient funding for attorney compensation.

Throughout the United States, there is an extraordinary range in the quality of counsel in child abuse and neglect cases.

The court can play an important role in training attorneys in child abuse and neglect cases. Judges and judicial officers can volunteer to provide training and publications for continuing legal education seminars.

Before becoming involved in an abuse and neglect case, attorneys should have the opportunity to assist more experienced attorneys in their jurisdiction. They should also be trained in, or familiar with:

- Legislation and case law on abuse and neglect, foster care, termination of parental rights, and adoption of children with special needs.
- The causes and available treatment for child abuse and neglect.
- The child welfare and family preservation services available in the community and the problems they are designed to address.
- The structure and functioning of the child welfare agency and court systems, the services for which the agency will routinely pay, and the services for which the agency either refuses to pay or is prohibited by state law or regulation from paying.
- Local experts who can provide attorneys with consultation and testimony on the reasonableness and appropriateness of efforts made to safely maintain the child in the home.

After attorneys are assigned or retained on an abuse and neglect case, they should do the following:

- Actively participate in every critical stage of the proceedings, including but not limited to hearings on adjudication, disposition, periodic case review, permanency planning, termination of parental rights, and adoption. When necessary to protect the interests of the client, the attorney should introduce and cross examine witnesses, file and argue motions, develop dispositional proposals for the court, and file appeals.
- Thoroughly investigate the case at every stage of the proceedings. Attorneys should know, among other things, the family's prior contacts with the child welfare agency; who made the decision to bring the case to court; the basis for state intervention, including the specific harm state intervention is supposed to prevent; and what alternatives, including voluntary in-home services and placement with relatives, were considered prior to initiating court proceedings.
- If the child has been removed from the home, determine what contacts the agency has since made with the parents and the child, and what efforts were made to reunify the family prior to the preliminary protective hearing.
- Conduct a full interview with the client to determine what involvement, if any, the child welfare agency has had with the parent or child; what progress the parents and child have made; and what services the client (parent or age-appropriate child) believes would be helpful.
- In preparation for such proceedings as adjudication, disposition, periodic review, and termination of parental rights proceedings, interview key witnesses including child welfare agency personnel, key service providers to the child and family, representatives of other key agencies, and others with knowledge of the case.
- Review all documents that have been submitted to the court.
- Review the agency's file and any pertinent law enforcement agency reports to evaluate the case and to ensure that the agency has complied with its own procedures and regulations.
- Obtain or subpoena necessary records, such as school reports, medical records and case records.
- When necessary, arrange for independent evaluations of children or parents.
- Stay in regular contact with clients, writing letters and making telephone calls when necessary and using tickler files.
- Continue to remain in contact with the agency and monitor case progress between court hearings.

2. Guardians ad Litem/Court Appointed Special Advocates (GALs/CASAs)

Recent legislative developments have recognized children's need for independent representation in dependency proceedings. The Child Abuse Prevention and Treatment Act of 1974 required states receiving federal funds for the prevention of child abuse and neglect to provide a guardian ad litem (GAL) for

every child involved in such proceedings. Since the federal act failed to define the role or responsibilities of GALs, some jurisdictions appoint specially qualified and trained attorneys as GALs; some appoint trained citizen volunteers as GALs, such as CASAs; and some lacking sufficient funding fail to provide children with GAL representation.

Court Appointed Special Advocates (CASAs) are specially screened and trained volunteer guardians ad litem (GALs) appointed by the court to speak up for the best interests of abused and neglected children. They review records, research information, and talk to everyone involved in the child's case. They make recommendations to the court as to what is best for the child and monitor the case until it is resolved.

Both trained volunteers and attorneys must play a significant role in providing GAL representation for children. In jurisdictions where there is role conflict and confusion, there should be joint efforts to clarify and define mutual responsibilities. Juvenile and family courts must continue to examine methods of using both volunteers and attorneys to improve the representation of children involved in dependency proceedings.[4]

F. Court Facilities

The courthouse should be centrally located in the community it serves and should be readily accessible through mass transit. The courtroom itself should be separate and apart from courtrooms used for adult criminal and civil cases. Ideally, courtrooms used for abuse and neglect cases should be physically separated from courtrooms used for other juvenile court proceedings. If this is not feasible, child abuse and neglect cases can be separated from other matters on the court's docket through scheduling.

Hearings should be held in a courtroom sufficient to accommodate the judicial officer and court staff, the agency attorney and social worker, the guardian ad litem, the custodial and non-custodial parents and their attorneys. There should be at least three counsel tables in the room: one for the agency, one for the guardian ad litem and one for the parents. Appropriate recording equipment should be available.

The courtroom must have adequate seating capacity, but need not have the appearance of a traditional courtroom. Smaller but comfortable courtrooms are often appropriate. The use of a conventional courtroom may be intimidating to children appearing before the court.

The judge should exercise some discretion in protecting the privacy interests of each party. Persons not directly involved in the hearing should not be permitted to be present in the courtroom. Other space should be provided for parties, witnesses, and attorneys waiting for hearings in the same court. There should be no side discussions or distractions permitted while the court is in session.

The use of a conventional courtroom may be intimidating to children appearing before the court.

The courtroom should have a telephone. A bailiff should be in the courtroom, and the judge should have a silent buzzer or other device available to obtain additional security personnel when necessary.

The judge or a court staff member should have a personal computer in the courtroom that is linked to a laser printer or other comparably efficient printer. The computer is needed to permit instantaneous preparation and distribution of court orders and findings at the hearing. Court forms can easily be programmed into the computer to facilitate rapid preparation of the orders. Judges, other judicial officers, and clerical staff must be trained in computer operations.

If a tape recorder rather than a court reporter or stenographer is used, the court must have appropriate, high-quality recording equipment available to allow efficient and cost-effective transcriptions. Where permitted by law, the court alternatively may use video-taping equipment and dispense with the transcription process.

G. Voluntary Agreements for Care

State law typically allows parents to enter into voluntary agreements with

public child protection agencies for the temporary placement of a child in foster care. These agreements, which are entered into prior to court involvement, are often referred to as voluntary agreements for care.

Voluntary agreements can serve useful purposes. In cases where a short-term placement is necessary for a defined purpose, such as when a parent enters in-patient hospital care, a voluntary agreement can allow the temporary placement of a child without unnecessarily involving the court and expending its scarce resources. Voluntary agreements can provide a method of immediately placing children in foster care with parental consent prior to initiating court involvement. This can avoid the need to petition the court for emergency removal.

Voluntary agreements, however, can be misused by child-placing agencies. Without proper safeguards on voluntary agreements, agencies can place children for extended periods without court involvement, thus circumventing court review of agency efforts. Voluntary agreements also can be misused to place children in foster care under circumstances where the agency lacks sufficient cause to seek court-ordered placement of the child.

To prevent misuse of voluntary agreements, a statutory framework should exist to regulate their use and to ensure judicial oversight. The use of voluntary agreements should be limited, and all voluntary agreements should be time-limited. Statutes should provide that all agreements automatically expire after a short, defined period of time, and can be extended only with the agreement of all parties and with court approval based upon a written report from the agency. Voluntary agreements should be approved only when it is apparent that each involved parent was a full and able participant in the agreement process.

A voluntary agreement should always be in writing and on a form that explains the parents' rights: the right to reasonable visitation with the child; the right to be consulted on decisions regarding the child's care and placement; and the right to revoke the agreement upon proper notice to the agency. The agency should be required to prepare a case plan whenever a child is placed pursuant to a voluntary agreement. The case plan should provide, at a minimum, each treatment goal that must be achieved for reunification to occur, the services to be provided, and the terms of visitation.

A voluntary agreement should always be in writing and on a form that explains the parents' rights.

To prevent misuse of voluntary agreements, judges should review each agreement when cases involving them become active with the court. If a judge notices a pattern of misuse of voluntary agreements, he or she can seek corrective action by bringing the problem to the attention of appropriate administrators within the agency. If a child has been placed inappropriately pursuant to a voluntary agreement, a judge may find (when appropriate) that the agency failed to make reasonable efforts to prevent or eliminate the need for placement of the child.

H. Emergency Orders

1. Child Protection

The majority of states allow the removal of an allegedly abused or neglected child prior to issuance of a court order. In emergency situations, it may be necessary to take steps to protect a child at or even before the beginning of litigation. It may be necessary to immediately remove a child from home or to expel from the home a parent who is alleged to have abused or neglected the child.

While quick and decisive action is sometimes necessary for the protection of the child, it can have a drastic impact on the family. Precipitous and unplanned removal of a child from home or forcible removal of a parent is always traumatic. Once such action is taken, it is difficult to reverse.

First, the court must act quickly to ensure protection of the child. Second, the court must provide prompt procedural protection for parents, consistent with the safety of the child. Third, it must

move proceedings forward as quickly as possible. Fourth, the court must make as careful and considered a decision as emergency circumstances allow.

2. Speedy Issuance of Orders

The police or the child protection agency (whichever is responsible under state law for emergency removal of children) should have virtually immediate access to the court in emergency situations. When the court is not open (evenings, weekends, and holidays), there should be 24-hour access to a judge to issue orders. Judges should be provided with electronic pagers to perform this function, and this responsibility should rotate. To allow for such rotation in sparsely populated rural counties, one judge should be empowered to take emergency calls for more than one county.

If an emergency arises during hours when the court is in operation, the court should provide a hearing on the same day. To make this possible, the court may need to set aside special times for emergency hearings such as the first thing in the morning or afternoon or at the end of the court day.

3. Procedural Protections in Emergencies

In emergency situations, there are several ways in which the decision to remove a child or alleged abuser might be made:

- An in-court hearing about which parents are given prior notice and the opportunity to appear;
- An *ex parte*, in-court hearing about which parents are not notified;
- An *ex parte* hearing by telephone in which parents do not participate;
- An *ex parte* hearing by telephone in which parents participate via telephone;
- Action by the police or child protection agency without prior court approval.

State law defines which of the preceding options are available and under what circumstances. In states without applicable statutes, this may be done either through court rules or informal court procedures.

These options are listed in order of priority, with the preferred procedure listed first. Thus, emergency custody should be obtained through a hearing where the parents have the opportunity to appear, unless this would place the child in danger. When such a hearing is requested, it should be conducted as soon as possible. Court-appointed counsel for both the parents and the children and/or a GAL/CASA for the children should be immediately available for such a hearing. If parents cannot be located in spite of agency efforts to notify them, the court must proceed with an *ex parte* hearing and instruct the agency to continue diligent efforts to provide such notice.

In some cases, providing parents with advance notice will endanger the child. Emergency custody or expulsion of an abuser through an *ex parte* hearing may then be selected. It might not be safe to notify the parents before removing the child if there is reason to believe that the parent might harm the child, intimidate or convince the child not to provide information, or abscond with the child.

If an emergency occurs in the evening or on a weekend or holiday, the court may issue an *ex parte* order by telephone. In states where the agency is authorized to take custody, an *ex parte* telephone custody order usually authorizes the agency to take custody of the child and instructs the police to provide assistance. An *ex parte* order for removal of a parent is necessarily executed by police.

The final option, action by the police or agency without prior court approval should be permitted only when it is not practical to use one of the first four options. For example, sometimes children are taken into custody by the police at the time that the police arrest a parent. In these cases, police subsequently contact the agency to arrange emergency placement for the child, and agency personnel come before the court at the preliminary protective hearing.

4. Advancing the Litigation in Emergencies

In the event an *ex parte* order must be issued, there are three important

steps: first, the court must review the agency's efforts to notify the parents and other responsible adults. Second, counsel should be provided as soon as parents are notified and consideration should be given to appointment of a GAL/CASA. Third, a preliminary protective hearing should immediately be scheduled to give parents the opportunity to contest the emergency order.

5. Procedure for Emergency Hearings

Ex parte hearings should be brief proceedings, in which the caseworker testifies concerning immediate danger to the child. A brief discussion of recent efforts by the agency to assist the family should seek to identify safe, non-disruptive ways to protect the child without removing the child or the alleged abuser from the home.

The *ex parte* hearing should be recorded, whether the hearing occurs in court or via telephone. The recording should be preserved as part of the court record. A written report also should be filed by the agency or police after the hearing. The report should contain a complete description of the circumstances of the removal. The recording of the hearing and the written report both provide a record that will be helpful in later proceedings and help protect against careless or false statements in requests for emergency orders.

I. Endnotes

1. See M. Solomon and D. Somerlot, Caseflow Management in the Trial Court: Now and For the Future (Washington, D.C.: American Bar Association, 1987); American Bar Association, Defeating Delay: Developing and Implementing a Court Delay Reduction Program (Washington, D.C., 1986).

2. See supra, M. Solomon and D. Somerlot, at 7-8.

3. See Mark Hardin, How to Work With Your Court: A Guide for Child Welfare Agency Administrators (Washington, D.C.: American Bar Association, 1993).

4. Rebecca H. Heartz, "Guardians Ad Litem in Child Abuse and Neglect Proceedings: Clarifying the Roles to Improve Effectiveness", Family Law Quarterly, Vol. 27, No. 3 (Washington, D.C.: American Bar Association, Fall 1993).

28

III. Preliminary Protective Hearings

PRELIMINARY PROTECTIVE HEARINGS TABLE OF CONTENTS

A. Introduction

The preliminary protective hearing is the first court hearing in a juvenile abuse or neglect case. A preliminary protective hearing is referred to in some jurisdictions as a "shelter care hearing," "detention hearing," "emergency removal hearing," or "temporary custody hearing." The preliminary protective hearing occurs either immediately before or immediately after a child is removed from home in an emergency. This initial hearing may be preceded by an *ex parte* order directing placement of the child. In extreme cases, a child may have been removed from home without prior court approval, and the preliminary protective hearing is the first review of the placement by the court.

In all states, the preliminary protective hearing must take place within a short time after the child has been removed from home. The time limit is specified by state law and, in most states, must occur within one to three judicial working days after removal.

Ideally, when a parent is contesting the agency's decision to seek placement of a child, the preliminary protective hearing should occur prior to the removal of the child. Removal should occur only after a completed court hearing and pursuant to a court order. If this is not possible, the preliminary protective hearing should occur within 72 hours after the child has been placed outside the parents' care.

The main purpose of the preliminary protective hearing is to make a decision concerning whether or not the child can be immediately and safely returned home while the trial is pending. This initial decision is often the most important decision to be made in an abuse and neglect case. Although it is made on an emergency basis, the decision must be based upon a competent assessment of risks and dangers to the child.

The preliminary protective hearing is an emergency matter. The family is often in crisis. Great demands are placed upon the social service agency to stabilize the situation and to provide services to permit the child to safely remain at home or return home. Unfortunately, many social service agencies believe it is safer to remove the child as a preventive measure and return the child to the family only after a full investigation is completed. This perspective ignores the great risk of out-of-home placements, the disruption such placements cause to the child and the family, and the emotional and fiscal costs involved in placing children. It also ignores the reality that safe, in-home caretakers can often be found if adequate investigation is undertaken and services are provided.

Once a child is removed it becomes logistically and practically more difficult to help a family resolve its problems.

To evaluate the likelihood and severity of harm if the child is returned home, the court must take into account not only the facts and circumstances that gave rise to the original removal of the child (i.e., the parents' or guardian's possible abuse or neglect), but also what might be done to safeguard the child in the home. That is, the court should evaluate both the current danger to the child, and what can be done to eliminate the danger. Harmful consequences of removal should also be considered. Removal is always a traumatic experience for a child. Once a child is removed it becomes logistically and practically more difficult to help a family resolve its problems.

A primary goal of the court should be to make the preliminary protective hearing as thorough and meaningful as possible. The court should conduct an in-depth inquiry concerning the circumstances of the case. It should hear from all interested persons present. As part of its inquiry, the court should evaluate whether the need for immediate placement of the child could be eliminated by providing additional services or by implementing court orders concerning the conduct of the child's caretaker. If the court determines that the child needs to be placed, the court must evaluate the appropriateness of the placement proposed by the agency and seek the least disruptive alternative that can meet the needs of the child. For example, the court should explore whether the needs

of the child could be met in the home of a relative.

Whether or not the court decides at the preliminary protective hearing that a child can safely go home, the court must determine whether the agency has made reasonable efforts to preserve the family. Courts should insist that adequate services are delivered to prevent the need for placement, and make certain that decisions to remove children from their homes are made prudently and after full consideration of less disruptive alternatives.

At the same time, the court should ensure that appropriate efforts are being made by the agency to provide for the needs of the family in a timely manner. The court can order the agency to obtain any additional reports or diagnostic assessments that may be needed such as psychological evaluations, drug abuse assessments or school records involving the children.

If the child will remain outside the home pending the trial, it is important to keep in mind that the time in which the preliminary protective hearing is held is a critical period of crisis for the family. It is the responsibility of the court to make sure that the agency takes immediate steps toward family reunification and tries to maintain the relationship between parent and child.

A secondary purpose of the preliminary protective hearing is for the court to move the litigation forward as quickly as possible and to oversee the agency's initial involvement in the case. Time is of the essence in child abuse or neglect cases. At the preliminary protective hearing the court should take steps to eliminate potential sources of delay in the litigation.

Time is of the essence in child abuse or neglect cases.

When preliminary protective hearings are thorough and timely, some cases can be resolved with no need for subsequent court hearings and reviews. In other cases, a thorough and early preliminary protective hearing can help simplify and shorten early hearings and can move the case more quickly to the later stages of adjudication, disposition, and review. This not only preserves court resources but reduces the cost and harm of unnecessary, prolonged out-of-home placement of children.

A timely and thorough preliminary protective hearing can shorten the time of foster care and speed the judicial process. By ensuring speedy notice of all parties, the hearing avoids delays due to difficulties with service of process. By ensuring early, active representation of parties, the hearing avoids trial delays due to scheduling conflicts and the late appointment of unprepared advocates. By clearing the trial (adjudication) date at a very early time, the hearing avoids later scheduling conflicts that otherwise would delay trial dates. By thoroughly exploring all issues at the preliminary protective hearing, the court can resolve and dismiss some cases on the spot, move quickly on some pretrial issues (such as discovery or court-ordered examination of parties), encourage early settlement of the case, encourage prompt delivery of appropriate services to the family, and monitor agency casework at a critical stage of the case.

Another purpose of the preliminary protective hearing is for the court to begin setting a problem-solving atmosphere so the child can remain safely at home or be safely returned home as quickly as possible. Parents are often angry and emotionally distraught at this hearing. The agency may have filed for emergency removal because the relationship between the social worker and parents has broken down. The adversarial nature of court proceedings can aggravate tensions between the parties. The court should take active steps to defuse hostilities, to gain the cooperation of the parties, and to assist parties in attacking the problem rather than each other.

Although the judge or judicial officer should not assume the role of caseworker, there are practical steps that a court can take to gain the cooperation of the parties and develop a problem-solving atmosphere. The court should remember that for many parents the preliminary protective hearing will be their first experience in court. The court can explain the hearing process to the

parents so they are less confused. The court can explain that it is not an arm of the agency, but that its role is to be an impartial decision-maker, acting upon information provided by all parties. The court can carefully listen and seek to thoroughly understand the perceptions and concerns of all parties present at the hearing. The court can insist that proper decorum is maintained by each party so that all persons present are treated with dignity and respect. The court can attempt to identify areas of agreement and mediate areas of dispute between parties so that some disputes are resolved by agreement rather than through contested hearings.

...there are practical steps that a court can take to gain the cooperation of the parties and develop a problem-solving atmosphere.

Due to the constraints of time, in some cases it might not be possible for the court to conduct a careful and complete initial preliminary protective hearing. In these circumstances, the court should:

- Decide all issues that can be immediately resolved at the current preliminary protective hearing;
- Provide specific guidance as to the persons who must be present and the issues to be decided at the subsequent preliminary protective hearing; and
- Continue the preliminary protective hearing for not more than 24 hours.

At the conclusion of the preliminary protective hearing, the parties should leave with a decision from the court concerning the placement of the child that is based on thorough understanding and careful consideration of the circumstances of the case. The parties should see that the court has taken an active role to move the case forward and to make certain that the agency responds to the needs of the family and child in a timely manner. The parties should leave the hearing with the perception that they were treated fairly by a court that is concerned about their interests and that is striving to build a working relationship between the parties so that the need for court intervention can be ended as quickly as possible.

A complete preliminary protective hearing requires a substantial initial investment of time and resources. Such an investment results in better decisions for children and their families, and preserves the resources of the court and child welfare system. Significant costs are incurred when a child is unnecessarily placed outside of the home. A child can suffer serious emotional and behavioral problems from the disruption and upheaval caused by placement. The parents' feelings of inadequacy and helplessness may be intensified, thereby making efforts to change their behavior even more difficult. The family may lose its income and housing, if the family has been dependent on public assistance. As a result of these and other effects of removing a child, extra efforts must often be made and significant costs incurred to resolve problems as early as possible in each case.

By insisting that adequate services are delivered to safely prevent the need for placement and by making certain that decisions to remove children from their homes are made with great care, courts can avoid costs associated with unnecessary placements. By investing the time to carefully review agency efforts and to suggest or order additional or more appropriate services, the court may find that its own time and resources are saved when cases are resolved in a more timely manner.

B. Who Should Be Present

Persons who should always be present at the preliminary protective hearing:

- Judge or judicial officer
- Parents whose rights have not been terminated, including putative fathers
- Relatives with legal standing or other custodial adults
- Assigned caseworker
- Agency attorney
- Attorney for parents (separate attorneys if conflict warrants)
- Legal advocate for the child and/or GAL/CASA
- Court reporter or suitable technology
- Security personnel

Judge or judicial officer

A judge or equally knowledgeable, law-trained judicial officer appointed by a judge, presides over the preliminary protective hearing and is responsible for making the required decisions. At a minimum, the judicial officer should be a lawyer. Whenever possible, the judicial officer should be a person who regularly presides over child abuse or neglect cases, who is familiar with the workings of the entire child welfare system, and who has broad knowledge of and experience with the services and placement options available in the community.

Parents whose rights have not been terminated, including putative fathers

It is critical that all parents involved in the life of the child be made a part of the court case as soon as possible. Non-custodial parents and involved putative fathers should be present because, if the child cannot be returned to the custodial parent immediately, it might be possible to place the child with the other parent rather than in state care.

Putative fathers who have not previously been involved in the child's life should also be brought into the court process as quickly as possible. Timely resolution of paternity issues is both in the best interests of the child, and essential to further case processing.

Relatives with legal standing or other custodial adults

When parents do not have custody, other custodians or guardians must, by law, be given notice and the opportunity to participate in preliminary protective hearings.

In many child neglect cases, parents have left children in the homes of relatives or friends who have become full-time caretakers but without legal custody. Full-time caretakers without legal custody but functioning as parents (*in loco parentis*) also should be present at the preliminary protective hearing. Their presence is needed both because the best decision may be to leave the child in their homes prior to trial and because they often have vital information about the child and family.

Unfortunately, because preliminary protective hearings are set on short time frames, it is difficult to notify parents through service of process. The social worker from the agency is often in the best position to notify parents of a preliminary protective hearing and should be expected to do so. The court can monitor agency efforts to notify parents by enquiring at the hearing as to what efforts were made to notify the parents and by setting additional hearings within a few days if a parent fails to appear. The prospect of an additional court appearance can motivate agency social workers to secure the attendance of parents at the preliminary protective hearing.

Assigned caseworker

To provide the court with complete, accurate, and up-to-date information for the hearing, the caseworker with primary responsibility for the case must be present. When this is not possible, the worker's supervisor, who has been well briefed on the case, should be present.

Agency attorney

The preliminary protective hearing is a critical event. This stage of the proceedings may have a powerful impact on the child and family, and on the long-term outcome of the case. All parties should be represented by counsel at the preliminary protective hearing. Further, the court should expect counsel to have prepared for the hearing in advance.

This requires, at a minimum, that the attorney has interviewed witnesses and conferred with both the worker and counsel for other parties well in advance of the hearing.

Attorney for parents (separate attorneys if conflict warrants)

Because of the critical strategic importance of the preliminary protective hearing, it is essential that parents have meaningful legal representation at the hearing. Most parents involved in these proceedings cannot afford counsel. Therefore, parents should be instructed to appear well in advance of the actual hearing so their eligibility for court-appointed counsel can be determined, counsel can be appointed, and parents can confer with counsel in advance of the hearing.

Legal advocate for the child and/or GAL/CASA

Federal and state law requires legal representation for children in child abuse and neglect cases, and this should apply at the critical preliminary protective hearing. In different jurisdictions, the mode of legal representation for children and the responsibilities of the advocate vary.

To obtain the presence of an attorney for the parents and a guardian ad litem at preliminary protective hearings, the court needs to make arrangements with the on-call organization that provides these persons for preliminary protective hearings. To facilitate scheduling, the court can set aside specific times and days when preliminary protective hearings will be held.

Court reporter or suitable technology

A court reporter or stenographer should be present to accurately record all proceedings at each preliminary protective hearing. If electronic technology is substituted for a court reporter, the recording equipment must be of appropriately high quality to allow the efficient, cost-effective, and timely production of a hearing transcript, when needed.

Security personnel

Security personnel should be available during all child abuse and neglect hearings. In all courts, security personnel must be immediately available to the court whenever needed. In some parts of the United States, security concerns may be serious enough to require guards or bailiffs to be present during all hearings.

Persons whose presence may also be needed at the preliminary protective hearing:

- Age-appropriate children
- Extended family members
- Adoptive parents
- Judicial case management staff
- Law enforcement officers
- Service providers
- Adult or juvenile probation or parole officer
- Other witnesses

In addition to persons who always should be present at preliminary protective hearings, there are others whose presence may also be needed, depending upon the facts and circumstances of the case:

Age-appropriate children

Children often should be present at the preliminary protective hearing, but their attendance can depend upon many factors including the age of the child, the physical and emotional condition of the child, and degree that requiring the child to be present might traumatize the child. As an alternative to bringing the child to a hearing, the agency may choose to present the child's hearsay statements and then allow the child's guardian ad litem to have access to the child at an off-site location or by telephone. In all cases, the child should be accessible in the event that the court determines that the child's presence is necessary.

Extended family members

When relatives either are already actively involved with a child or are interested in caring for a child, their presence can be valuable at a preliminary protective hearing. Relatives can provide essential information about the situation, can help protect the child in the home (thus allowing the court to return the child home), and can become the imme-

diate caretaker of the child, if necessary. It is helpful for the court to observe the child's relatives and be able to speak to them directly at the hearing.

Adoptive parents

Adoptive parents must, by law, have the same rights in the legal process as biological parents.

Judicial case management staff

It is possible for courts to function efficiently with no judicial staff other than the judge or judicial officer in the courtroom. However, administrative staff who are present in the courtroom can help the judge by greeting the parties, handing out papers, operating tape recording equipment (where applicable), preparing and checking court orders, and completing errands and tasks necessary to help the judge complete the hearing.

Law enforcement officers

Law enforcement officers who remove children from dangerous situations are often key witnesses. They sometimes need to be present to testify when parents demand the child's immediate return home.

Service providers

When a family has already been intensively involved with a service provider such as a public health official, homemaker, or mental health professional, that professional may provide essential information at the preliminary protective hearing. The professional may, for example, assist the court to identify a means of leaving the child safely at home.

Adult or juvenile probation or parole officer

Family members may either presently or recently have been involved with juvenile or adult probation or parole services. Department officers with past or current knowledge pertinent to the family's circumstances can often provide the court with valuable testimony. Both juvenile and adult probation and parole departments should be contacted and potential witnesses identified and asked to appear at the preliminary protective hearing.

Other witnesses

It should be remembered that critical decisions affecting the lives of children are made at preliminary protective hearings. While continued placement of a child outside the home prior to adjudication may be essential to a child's safety, in some cases it also may be unnecessary and traumatic to the child. To ensure careful and informed judicial decisions, the court must make it possible for witnesses to testify at the preliminary protective hearing. When appropriate, the court should be prepared to briefly continue the hearing to allow the testimony of witnesses.

The agency is responsible for securing the attendance of its own witnesses. This is often difficult because witnesses may be unavailable on the short time frames required by preliminary protective hearings, and subpoenas often cannot be delivered in time for the hearing. The agency also may not know to what degree the hearing will be contested, and therefore, may not know which witnesses will actually be needed.

Eyewitnesses to the neglect or abuse of the child, police officers who have investigated the case, service providers who have been involved with the family, and medical providers who have examined the child can all provide valuable testimony at the preliminary protective hearing. If these witnesses are unavailable to testify in court, the agency can arrange a telephone conference call. As a last resort, written reports prepared for the hearing, business and medical records, or police reports can be made available to the court.

If the court considers the in-court testimony of an absent witness essential, the next hearing in the case can be set on the first available date when the witness can be present. The court can convey its expectations to the agency concerning necessary witnesses by continuing the preliminary protective hearing for the presence of the essential witness.

Courts can make sure that parties and key witnesses are present by:

- Requiring quick and diligent notification efforts by the agency;
- Requiring both oral and written notification in language understandable to each party and witness;
- Requiring notice to include reason for removal, purpose of hearing, availability of legal assistance;
- Requiring caseworkers to encourage attendance of parents and other parties.

To make sure that parents, custodians, and other witnesses are present during preliminary protective hearings, special efforts are required. Understandable explanations of what has happened must be handed to parents, custodians, or caretakers when children are first removed. A written notification in understandable language must state the reason for removal, the time and place of the hearing, the name and number of a person to call to obtain court-appointed counsel, and the need for immediate action.

For parents, custodians, and other caretakers who are not present when children are taken, the agency must make diligent efforts to provide them with this information. At the hearing, the agency caseworker must explain what has been done to notify the parties. Finally, court staff must be available to take calls from parents and to arrange for the appointment of counsel.

Perhaps the most important factor in influencing whether parents and others will actually appear at the preliminary protective hearing is the attitude of the assigned caseworker. Juvenile and family courts should require caseworkers to exert their best efforts to have parents and other necessary witnesses attend the preliminary protective hearing. In some cases, this may even involve arranging appropriate transportation for parties.

Courts can take several approaches to persuade caseworkers both to attend preliminary protective hearings and to encourage parents and others to attend. To ensure that attorneys and other advocates are present during preliminary protective hearings, the court may need to take even stronger steps. Where attorneys are appointed from lists, the court may need to revise procedures for the appointment of counsel so that appointment occurs prior to the preliminary protective hearing. Attorneys and parties may need to be instructed to appear before the hearing begins so that: (a) their eligibility for appointed counsel can be determined in advance; and (b) parties can confer with counsel before the hearing begins.

Where courts enter into contracts with outside organizations to provide legal representation for parents and children, the contracts need to specify that the advocates will be present prior to preliminary protective hearings to meet with their clients and that they will prepare for the hearing to the extent practical given the limited time available.

C. Filing the Petition

- A sworn petition or complaint should be filed at or prior to the time of the preliminary protective hearing.

- The petition should be complete and accurate.

It is important for petitions to be filed at or before preliminary protective hearings for at least two reasons. First, if the petition is ready at the time of the hearing, it can be given to parents on the spot, avoiding the need for service at parents' homes. Second, service of the petition at the preliminary protective hearing provides the parties with adequate notice of the reasons for the court proceedings. To provide proper notice of the charges, the petition must contain a complete and accurate statement of the reasons for agency intervention.

D. Key Decisions the Court Should Make at the Preliminary Protective Hearing:

- Should the child be returned home immediately or kept in foster care prior to trial?
- What services will allow the child to remain safely at home?
- Will the parties voluntarily agree to participate in such services?
- Has the agency made reasonable efforts to avoid protective placement of the child?
- Are responsible relatives or other responsible adults available?
- Is the placement proposed by the agency the least disruptive and most family-like setting that meets the needs of the child?
- Will implementation of the service plan and the child's continued well-being be monitored on an ongoing basis by a GAL/CASA?
- Are restraining orders, or orders expelling an allegedly abusive parent from the home appropriate?
- Are orders needed for examinations, evaluations, or immediate services?
- What are the terms and conditions for parental visitation?
- What consideration has been given to financial support of the child?

The preliminary protective hearing provides the court with an opportunity to make basic decisions concerning the placement of the child; take steps to move the litigation forward; oversee the agency's initial involvement with the case; and emphasize specific problem-solving so that the child can safely remain home or be returned home as quickly as possible.

The following is a discussion of specific key decisions to be made by the court at the preliminary protective hearing:

- **Should the child be returned home immediately or kept in foster care prior to trial?**

As explained above, the key decision that the court makes at the preliminary protective hearing is whether to return a temporarily-placed child home immediately. Often, the child's removal from home triggers the preliminary protective hearing, and the hearing is held to decide whether the child needs to stay outside the home.

In deciding whether to return the child home, the court evaluates the danger to the child by hearing allegations of abuse or neglect. In addition, the court needs to examine whether there are any possible means of protecting the child without placing the child in foster care.

- **What services will allow the child to remain safely at home?**

To decide whether there are available means to allow a child to be maintained safely at home, the court must be made aware of services available in the community. In neglect cases, for example, emergency homemakers, day care, or in-home baby-sitters can often eliminate immediate danger to the child. In a wide variety of cases, intensive home-based services in which professionals spend long periods of time in the home sharply reduce danger to the child.

- **Will the parties voluntarily agree to participate in such services?**

In some states, the court can order specific, in-home services to ensure the child's safety while remaining or returning to the family. In other states, the court can order that the child be maintained in the home, or returned home, with child welfare agency assurance that family-based or home-based services will be provided. All juvenile and family court judges must become informed about the existence and availability of services in the community.

- **Has the agency made reasonable efforts to avoid protective placement of the child?**

In connection with the decision to remove a child from home, the court also must determine whether the responsible public agency has made reasonable efforts to preserve the family. Upon deciding to remove a child, the court must decide both whether the agency has

made reasonable efforts to prevent the need for the child's removal from home and, whether, within the short time available, the agency has made reasonable efforts to make it possible for the child to safely return home. The "reasonable efforts" determination is required by federal law, as a condition for state receipt of federal foster care matching funds.[1] It is also required by statute in most states.[2]

Reviewing agency efforts to keep the family together is necessary not only because federal law requires it, but also because review of agency efforts helps the court to decide whether the child can safely be returned home. By taking a careful look at the agency's prior efforts to help the family, the court can better evaluate both the danger to the child and the ability of the family to respond to help.

- **Are responsible relatives or other responsible adults available?**

At the preliminary protective hearing, the court needs to take into account what help may be obtained from appropriate relatives or other responsible adults involved with the child. Immediate placement with relatives or another responsible adult is possible if either is willing to care for the child and the agency has already been able to favorably evaluate them.

Even if relatives or other responsible adults are not available to assume full-time care of a child, they may be available as a resource to supervise visitation when necessary. Sometimes, the agency will not have had time to assess relatives or other responsible adults involved with the child prior to the preliminary protective hearing. If it is too early to evaluate relatives or other adults, but placement of the child with them is a possibility, the court needs to set a schedule for prompt agency evaluation.

- **Is the placement proposed by the agency the least disruptive and most family-like setting that meets the needs of the child?**

If the child must be removed from home and cannot be placed with relatives or a responsible adult, the court should evaluate the placement proposed by the agency to determine whether it is the most appropriate and least disruptive placement. For example, children should not routinely be placed in group home shelters when they are capable of functioning in the family-like setting of a foster home.

If the most appropriate setting for the child is not immediately available on an emergency basis, the court should make certain that appropriate referrals are made so that the child can be moved to a preferred placement when one becomes available.

- **Will implementation of the service plan and the child's continued well-being be monitored on an ongoing basis by a GAL/CASA?**

The preliminary protective hearing also provides the opportunity for the court to consider appointment of a GAL/CASA for the child. Appointment early in the court process allows ample time for the GAL/CASA to gather information and make recommendations to the court and provides continuity of representation for children whose caseworkers and foster parents are likely to change through the course of court proceedings.

- **Are restraining orders, or orders expelling an allegedly abusive parent from the home appropriate?**

In child abuse cases where a child is alleged to have been physically or sexually abused by only one parent, it may be that the child can be safely returned to the non-abusing parent. In order to ensure that the child will be protected, it may be necessary to issue protective orders concerning the child. These may include, for example, orders expelling the allegedly abusive parent from the home or restraining the allegedly abusive parent from contacting or visiting the child.

- **Are orders needed for examinations, evaluations, or immediate services?**

During many preliminary protective hearings, the court should order an examination or evaluation by an expert. For example, the court may need to authorize a prompt physical or mental examination of the child to assess the child's need for immediate treatment.

An expert evaluation of a child is frequently essential for placement planning if the child needs to be placed outside of the home. An evaluation can often identify special treatment needs of the child; for example, whether the child will need placement in a residential treatment facility or therapeutic foster home.

Further examination of the child may be needed to preserve evidence bearing on whether the child has been abused. The need for such examinations and evaluations is often already clear at the preliminary protective hearing, and ordering them at that time can speed the pace of litigation.

Sometimes an expert evaluation is needed to determine the fitness of a parent or relative to provide immediate care for the child. If the evaluation is positive it can curtail the child's separation trauma by allowing the child's early return from foster care. On the other hand, if the evaluation is negative, its early submission will speed the pace of litigation and shorten the child's stay in foster care. A judge may also recommend an examination, hold an additional hearing and subpoena witnesses if the evaluation does not take place as recommended, and may withhold a positive determination of reasonable efforts if evaluations are not promptly completed.

- **What are the terms and conditions for parental visitation?**

If a child cannot be returned home after the preliminary protective hearing, immediate parent-child visitation often can ease the trauma of separation. Early visitation helps to maintain parental involvement and speed progress on the case.[3]

Judicial oversight of visitation helps to ensure that visitation is begun promptly, that it is permitted frequently, and that unnecessary supervision and restrictions are not imposed. The court should make an initial decision concerning the frequency, duration and terms of visitation for the parents, such as whether visitation should be supervised or unsupervised. The court should also decide whether there is a need for any additional orders concerning the conduct of the parents or agency efforts to provide services to the parents or child.

- **What consideration has been given to financial support of the child?**

All potential sources of financial support for the child should be identified and considered in court decisions affecting the child. This includes financial support for health services, special educational or developmental needs, and basic child support. Paternity issues which remain unresolved at the time of the preliminary protective hearing remain a judicial priority at all subsequent proceedings.

E. Additional Activities at the Preliminary Protective Hearing

- Reviewing notice to missing parties and relatives;
- Serving the parties with a copy of the petition;
- Advising parties of their rights;
- Accepting admissions to allegations of abuse or neglect.

There are a number of other functions that the court should perform at the preliminary protective hearing, in addition to the preceding key decisions:

- **Reviewing notice to missing parties and relatives**

One of the most important functions of the court during the preliminary protective hearing is to oversee the agency's early efforts to locate and notify missing parties and relatives. During the preliminary protective hearing, the court should inquire about parties who are not present and should require an explanation of agency efforts to locate and notify them of the proceeding. Speedy decision-making is critical in child abuse or neglect cases, and timely notice to the parties helps prevent delays.

- **Serving the parties with a copy of the petition**

If the petition and summons have been prepared in advance of the preliminary protective hearing and the parties are present, the preliminary protective hearing provides an excellent opportunity to efficiently complete service of process.

- **Advising parties of their rights**

If a party is unrepresented by counsel at the preliminary protective hearing, the court should advise the party of the right to counsel, including the right to court-appointed counsel, where applicable. Even when the parties are represented at the hearing, the court should explain the nature of the hearing and the proceedings that will follow.

- **Accepting admissions to allegations of abuse or neglect**

When counsel has been provided in advance of the preliminary protective hearing, parties are sometimes willing to stipulate to a judicial finding that they have abused or neglected the child. Reviewing and accepting the stipulation at that point advances the pace of the litigation and simplifies the work of the agency and its attorneys.

F. Submission of Reports to the Court:

- **The court should require submission of agency and/or law enforcement reports at least one hour prior to the preliminary protective hearing.**

- **Reports to the court should describe all circumstances of removal, any allegations of abuse or neglect, and all efforts made to try to ensure safety and prevent need for removal.**

Given the short time from removal of the child to the time of the preliminary protective hearing, it is not reasonable to expect lengthy reports and written assessments to be submitted in advance of the hearing. However, agency staff should be expected to submit a brief written description of the circumstances surrounding the removal of the child and the agency's prior efforts, if any, to preserve the family. This report should be provided to the other parties and their attorneys as early as possible in advance of the hearing and no later than one hour in advance. Advance submission of the report is needed to give the parents an opportunity to offer a defense or to propose alternatives to foster placement.

If a law enforcement agency was involved in removal of the child from home, an officer who was present should submit a report. This report should describe precisely what the officer observed during the incident. This report should be made available to the parties no later than the report by agency staff.

G. The Court's Written Findings of Fact and Conclusions of Law at the Preliminary Protective Hearing Should:

- Be written in easily understandable language which allows the parents and all parties to fully understand the court's order.

If child is placed outside the home:

- Describe who is to have custody and where child is to be placed;
- Specify why continuation of child in the home would be contrary to the child's welfare (as required to be eligible for federal matching funds);
- Specify whether reasonable efforts have been made to prevent placement (including a brief description of what services, if any, were provided and why placement is necessary);
- Specify the terms of visitation.

Whether or not the child is returned home:

- Provide further directions to the parties such as those governing future parental conduct and any agency services to the child and parent agreed upon prior to adjudication.
- Set date and time of the next hearing.

At the conclusion of the hearing, the court's written findings of fact and conclusions of law should be prepared and distributed in person to the parties. This should occur at the conclusion of the hearing while the parties are still

present. Handing out an order and findings addressing the issues gives the parties an immediate, written record of what has been decided, what they are expected to do prior to the next hearing, any social services voluntarily accepted, and the date and time of the next hearing.

When the form is on a computer, the order and findings can be filled in quickly at the conclusion of the hearing. The form should include the court's express findings concerning:

(1) whether the child needs to be placed in substitute care and under whose custody the child should be placed;
(2) whether the child's continued residence in or return to the home would be contrary to the child's best interests and welfare;
(3) whether the placement proposed by the agency is the least disrup tive placement that meets the needs of the child;
(4) whether the agency has made reasonable efforts to prevent or eliminate the need for placement of the child;
(5) what the initial terms of visitation will be;
(6) whether additional orders are needed concerning the conduct of the parents or agency efforts to provide services; and
(7) whether additional orders are needed to address the immediate needs of the child, such as immediate medical treatment or evaluation.

Along with its legal conclusions, the court should provide a brief explanation of the facts upon which its conclusions are based. The court's entry need not be elaborate, but should document that the court has addressed each of the basic issues presented at a preliminary protective hearing, and that the court's decision is based upon a reasoned analysis of the evidence presented. The entry should also document the court's orders and expectations concerning the parents' and the agency's future conduct.

H. Conclusion

A timely, careful and complete preliminary protective hearing can benefit each child and family before the court by:

- Preventing the unnecessary removal of children from their families by carefully evaluating the danger and exploring possible safe alternatives to removal.
- Limiting the trauma when a child must be removed by requiring liberal parent-child visits (where safe and appropriate), by identifying appropriate placements, and making sure that relatives and family friends will promptly be contacted and involved.
- Speeding casework when children must be temporarily removed from their families by requiring early evaluations, examinations and emergency services.
- Speeding litigation by early completion of critical court business such as service of process, establishment of trial date, and face-to-face meetings between attorneys and clients.
- Explaining to parents and other family members why the state has intervened and how the judicial process works.
- Beginning early discussions of settlement possibilities and appropriate services to children and families.

I. Resource Guideline

It is recommended that 60 minutes be allocated for each preliminary protective hearing.

Hearing Activity	Time Estimate
1. Introductory Remarks • introduction of parties • advisement of rights • explanation of the proceeding	5 Minutes
2. Adequacy of Notice and Service of Process Issues	5 Minutes
3. Discussion of Complaint Allegations/Introduction of Evidence • introduction of the complaint • caseworker testimony • witness testimony • parent testimony	15 Minutes
4. Discussion of Service Needs/Interim Placement of Child • parental visitation • sibling visitation • service referral	15 Minutes
5. Reasonable Efforts Finding	5 Minutes
6. Troubleshooting and Negotiations Between Parties • time for parents to speak and ask questions • explanation of court procedures to confused parents • identification of putative fathers and investigation of paternity issues • identification of potential relative placements • restraining orders	10 Minutes
7. Issuance of Orders and Scheduling of Next Hearing • issue interim custody order (as necessary) • preparation and distribution of additional orders to all parties prior to adjournment	5 Minutes
Time Allocation	60 Minutes *

*Child abuse and neglect cases are frequently resolved without contested hearings by agreement of the parties. Because an outcome reached by agreement is often superior to an outcome reached through litigation, courts should encourage settlement without contested litigation in appropriate cases. Alternatives to contested litigation include settlement conferences conducted by the parties, judicially-supervised settlement conferences, and formal mediation. For more information on alternatives to contested litigation in child abuse and neglect cases, please see Appendix B.

J. Preliminary Protective Hearing Checklist

Persons who should always be present at the preliminary protective hearing:

- Judge or judicial officer
- Parents whose rights have not been terminated, including putative fathers
- Relatives with legal standing or other custodial adults
- Assigned caseworker
- Agency attorney
- Attorney for parents (separate attorneys if conflict warrants)
- Legal advocate for the child and/or GAL/CASA
- Court reporter or suitable technology
- Security personnel

Persons whose presence may also be needed at the preliminary protective hearing:

- Age-appropriate children
- Extended family members
- Adoptive parents
- Judicial case management staff
- Law enforcement officers
- Service providers
- Adult or juvenile probation or parole officer
- Other witnesses

Courts can make sure that parties and key witnesses are present by:

- Requiring quick and diligent notification efforts by the agency;
- Requiring both oral and written notification in language understandable to each party and witness;
- Requiring notice to include reason for removal, purpose of hearing, availability of legal assistance;
- Requiring caseworkers to encourage attendance of parents and other parties.

Filing the petition:

- A sworn petition or complaint should be filed at or prior to the time of the preliminary protective hearing.
- The petition should be complete and accurate.

Key decisions the court should make at the preliminary protective hearing:

- Should the child be returned home immediately or kept in foster care prior to trial?
- What services will allow the child to remain safely at home?
- Will the parties voluntarily agree to participate in such services?
- Has the agency made reasonable efforts to avoid protective placement of the child?
- Are responsible relatives or other responsible adults available?
- Is the placement proposed by the agency the least disruptive and most family-like setting that meets the needs of the child?
- Will implementation of the service plan and the child's continued well-being be monitored on an ongoing basis by a GAL/CASA?
- Are restraining orders, or orders expelling an allegedly abusive parent from the home appropriate?
- Are orders needed for examinations, evaluations, or immediate services?
- What are the terms and conditions for parental visitation?
- What consideration has been given to financial support of the child?

Additional activities at the preliminary protective hearing:

- Reviewing notice to missing parties and relatives;
- Serving the parties with a copy of the petition;

- Advising parties of their rights;
- Accepting admissions to allegations of abuse or neglect.

Submission of reports to the court:

- The court should require submission of agency and/or law enforcement reports at least one hour prior to the preliminary protective hearing.
- Reports to the court should describe all circumstances of removal, any allegations of abuse or neglect, and all efforts made to try to ensure safety and prevent need for removal.

The court's written findings of fact and conclusions of law at the preliminary protective hearing should:

- Be written in easily understandable language which allows the parents and all parties to fully understand the court's order.

If child is placed outside the home:

- Describe who is to have custody and where child is to be placed;
- Specify why continuation of child in the home would be contrary to the child's welfare (as required to be eligible for federal matching funds);
- Specify whether reasonable efforts have been made to prevent placement (including a brief description of what services, if any, were provided and why placement is necessary);
- Specify the terms of visitation.

Whether or not the child is returned home:

- Provide further directions to the parties such as those governing future parental conduct and any agency services to the child and parent agreed upon prior to adjudication.
- Set date and time of next hearing.

K. Endnotes

1. See 42 USC §§ 672(a)(1), 671(a)(15).

2. For a general discussion of the reasonable efforts requirement, see National Council of Juvenile and Family Court Judges, et al., Making Reasonable Efforts: Steps for Keeping Families Together (New York: The Edna McConnell Clark Foundation, 1987); D. Ratterman et al., Reasonable Efforts to Prevent Foster Placement: A Guide to Implementation (Washington: American Bar Association, 1987).

3. On the necessity for liberal parent-child visitation for children in foster care, see K. Blumenthal and A. Weinberg, eds., Establishing Parent Involvement in Foster Care Agencies (New York: Child Welfare League of America, 1984); Blumenthal and Weinberg, "Issues Concerning Parental Visiting of Children in Foster Care," in Foster Children in the Courts, 372-398 (Boston: Butterworth Legal Publishers, 1983).

IV. Adjudication Hearings

ADJUDICATION HEARINGS TABLE OF CONTENTS

A. Introduction

The adjudication is the trial. This is the stage of the proceedings in which the court determines whether allegations of dependency, abuse or neglect concerning a child are sustained by the evidence and, if so, are legally sufficient to support state intervention on behalf of the child. If the petition seeking court intervention on behalf of a child is sustained, the court may proceed to the disposition stage and determine who shall have responsibility for the child and under what conditions. Adjudication provides the basis for state intervention into a family, while disposition concerns the nature of such intervention. In some states, the adjudication hearing is called the "jurisdictional hearing" or "fact finding hearing."

The outcome of adjudication controls whether the state may intervene over the objections of the family. In all cases, the legal rights of interested parties are affected by the adjudication and they therefore are entitled to notice as a matter of constitutional law. The manner in which the adjudication is conducted also has important long-term implications for the child and family. First, a speedy adjudication can reduce the length of time a child spends in placement. Often it is necessary for the court to make a definitive decision whether or not a child has been abused or neglected before the agency and parents can begin to work together. The time in which this adjudication is completed may control the timing of later judicial proceedings. In some states, the grounds for termination of parental rights require the passage of a certain period of time after the adjudication or disposition order.

A primary characteristic of the adjudication hearing is that formal legal process must be used to notify essential parties and witnesses of the hearing and secure their attendance.

At preliminary protective hearings, problems may arise because of short notice for obtaining representation for parents and guardians ad litem for children. This problem should be addressed at the preliminary protective hearing so that by the time an adjudication hearing is held, all necessary appointments are made.

Case outcomes are improved when all interested parties receive timely notice of the adjudication. Parties include not only the parent allegedly committing the abuse or neglect, but also non-custodial parents, putative fathers, other persons with legal custody, and, depending upon state laws, long-term physical custodians. In many courts, such parties are not currently being given notice prior to adjudication, particularly when the custodial parent objects. Yet, when the parties are provided with early notice, they may make essential contributions to resolving the case, by (a) giving important information to the court, (b) providing a placement for the child, (c) paying child support, or (d) offering important emotional support for the child.

When parties are not provided with notice prior to the adjudication, this often prolongs children's placement in foster care. For example, when a noncustodial parent or putative father is first notified after efforts to work with the custodial parent are exhausted, new efforts must be initiated to work with the noncustodial parent or putative father.

It is necessary to resolve issues of paternity at an early point in the litigation.

When parents are missing, parties should be expected to enlist the assistance of the Parent Locator Service which locates missing parties in child support cases. This service must be provided for free. Specific limits apply concerning the time within which the search must occur.

It is necessary to resolve issues of paternity at an early point in the litigation. This should include prompt blood testing, if necessary. It may be necessary to resolve paternity in order to determine such questions as whether the putative father should be admitted as a party to the litigation, whether an attorney should be appointed to represent him if he is indigent, and whether he should be considered as a candidate for

custodian of the child if he is interested.

An accurate trial record at adjudication has importance beyond the adjudication itself. Adjudication should determine the precise nature of the abuse or neglect so that disposition, case work, and later court review can be focused on the specific facts which resulted in state intervention. Until the facts have been legally established at adjudication, the agency may be unable to secure the cooperation of the parents who have denied any problems exist. A clear record of the facts established at adjudication may be useful in later legal proceedings. This record may foreclose later factual disputes or may provide important evidence which would otherwise be unavailable.

A clear record of the facts established at adjudication may be useful in later legal proceedings.

B. Timing of Adjudication

Principles of sound case flow management require that there be specific and strict time limits for every stage of the court process, including the adjudication.

Because of the traumatic effect of removal of a child from the home, it is essential that the adjudication hearing take place as soon as it is practical. Court rules or guidelines need to specify a time limit within which the adjudication must be completed. Court enforcement of a time limit within which adjudication must take place compels court clerks, attorneys, investigators, and social workers to adjust to a quicker pace of litigation.

Experience in many jurisdictions has shown that it is possible to conduct the adjudication within 60 days after removal of the child. Some jurisdictions set even shorter time limits. Accordingly, when a child is in emergency protective care, the adjudication should be completed within 60 days of the removal of the child, whether or not parties are willing to agree to extensions. Exceptions should be allowed only in cases involving newly discovered evidence, unavoidable delays in the notification of parties, and unforeseen personal emergencies. For the sake of administrative simplicity, the same time limit should apply to other abuse and neglect cases as well.

Juvenile court proceedings generally should go forward when related criminal proceedings are pending. Delays in adjudication delay progress toward family rehabilitation and reunification. In cases where reunification is impossible, delays in adjudication also delay progress toward termination of parental rights and adoption efforts.

Occasionally, special circumstances can justify delaying juvenile court proceedings pending the completion of a criminal case. For example, if allegations of a heinous crime committed by both parents against the child were pending, and a criminal conviction would form a legal basis for termination of parental rights under state law, it may be advisable to delay juvenile proceedings and proceed directly to termination upon completion of the criminal case.

C. Admissions and Agreements

Most petitions are uncontested. Therefore, court policies and procedures for uncontested adjudications are particularly important. An uncontested adjudication, in the form of an admission by the parents or their attorneys or an agreement or stipulation among the parties, may take place any time after the first court appearance, up to the date of trial.

When petitions are uncontested, it is essential that the court's findings accurately record the reasons for state intervention. Negotiated findings that do not accurately describe the abuse or neglect should be avoided.

Adjudicatory findings of abuse and neglect should be the benchmark against which later case progress is measured. Adjudicatory findings are the basis for the case plan and later are equally important to case review. The case plan should address the real dangers or abuse or neglect which necessitated court intervention.

The original findings are again a critical point of reference when the court must later decide whether a child can

safely return home. The accuracy of adjudicatory findings should not be bargained away and judges should discourage this practice. Case reviews should measure the progress the family is making in eliminating the abuse or neglect which was the original reason for state intervention, as specified in the adjudicatory findings.

Based upon these considerations, allegations of abuse should be pursued unless the prosecutor states that the allegations cannot be proved, or cannot be proved without the child's in-court testimony, and mental health experts state that such testimony would be traumatic to the child. Similar assurances should also be required in cases where allegations of physical abuse or drug abuse have been dropped.

There are limits to a judge's role in overseeing settlement agreements, due to the court's impartiality and lack of independent knowledge of the facts of a case. Nevertheless, many inappropriate pleas and stipulations can be eliminated through careful judicial scrutiny.

Parties should be able to stipulate or consent to adjudicatory findings without addressing dispositional issues. Likewise, they should also be permitted to reach a simultaneous settlement of adjudication and disposition. However, in states where agencies are required to submit predisposition reports, no combined adjudication-disposition agreement should be approved unless the parties received the agency's predisposition report well in advance of the agreement.

Before accepting a stipulation or admission, the court should determine that the parties understand the content and consequences of the stipulation or admission. Written copies of a stipulation or admitted facts should be provided to the parties and their counsel.

D. Who Should Be Present

The adjudication hearing requires the attendance of many if not most of the same persons required for attendance at the preliminary protective hearing. Among those who should always be present are:

- Judge or judicial officer
- Parents whose rights have not been terminated, including putative fathers
- Relatives with legal standing or other custodial adults
- Assigned caseworker
- Agency attorney
- Attorney for parents (separate attorneys if conflict warrants)
- Legal advocate for the child and/or GAL/CASA
- Court reporter or suitable technology
- Security personnel

Parents, guardians, and custodians of children should be present at the adjudication hearing, even when the case is uncontested. This should include noncustodial parents and putative fathers whenever practical. Parents, guardians, and custodians need to be present to enable the court to ensure that they fully understand and approve their plea or stipulation.

In many states, it is realistic to expect service of process on all parties prior to adjudication. This is possible in states where statutes authorize speedy procedures for service of process on missing parties. But in states where, for example, service by publication is required and can take months to complete, it may be necessary to complete the adjudication based upon service of process only on the custodial parents or other guardian or custodian. When this is necessary, it is advisable for a judge to complete the adjudication before publication and go forward with disposition. The judge should then make sure that service is completed as soon as possible. If parties appear in a timely manner after receiving notice, they should be permitted to be heard on all issues, including application for custody of the child and dismissal of the case.

Judges need to be exacting concerning the presence of noncustodial parents and putative fathers at the adjudication. When noncustodial parents and putative fathers are brought into the litigation late, children often remain in foster care longer than necessary. If noncustodial parents and putative fathers are notified early, they may be able to take the children into their own homes and provide good care for them.

There are several ways judges can encourage the presence of noncustodial parents and putative fathers at adjudication. First, as discussed earlier, noncustodial parents and putative fathers should be encouraged to attend preliminary protective hearings. Where parties have not been located, additional pretrial hearings should be convened to give them further opportunity to appear or for the agency to provide an explanation of their absence. Second, if an agency is unable to locate and personally serve a noncustodial parent or putative father prior to adjudication, the agency should be required to submit an affidavit describing its efforts to locate and serve the noncustodial parent or putative father. Third, if there is more that can be done to locate a missing party, the judge should provide instructions to the petitioner and should then monitor the ongoing search.

When putative fathers are identified and brought into the case, the court should first determine if there is agreement among all parties concerning paternity. If it is agreed that the putative father is the actual father and there are supporting facts, this individual should be accepted as a party to the litigation. If there is disagreement or the evidence is unclear, the court should promptly order tests for paternity. When possible, paternity tests should be completed prior to adjudication.

If adjudication is uncontested, all parties who have been located and served should be present at the hearing with their attorneys. The presence of all parties and their attorneys is needed to enable them to defend the stipulation or agreement and to answer the judge's questions. If the adjudication is contested, the same people who should be at the preliminary protective hearing should be present at the adjudication.

Among persons whose presence may also be needed at the adjudication hearing are:

- Age-appropriate children
- Extended family members
- Adoptive parents
- Judicial case management staff
- Law enforcement officers
- Service providers
- Other witnesses

If the adjudication is contested, additional witnesses deemed necessary by the parties must be present. The court's role in identifying and ensuring the presence of parties is vital.

In spite of agency efforts, parents, other parties and key witnesses often may be unavailable to attend adjudicatory proceedings. The court may wish to examine agency efforts to identify and locate parties and key witnesses, and problems with the service of process.

E. Key Decisions the Court Should Make at the Adjudication Hearing

The principal decisions that the court must make at adjudication are: (1) which allegations of the petition have been proved or admitted, if any; (2) whether there is a legal basis for continued court and agency intervention; and (3) whether reasonable efforts have been made to prevent the need for placement or safely reunify the family.

The court's findings at the adjudication hearing lay a foundation for subsequent planning. Findings identify the problems that must be corrected to allow the child to be safely returned home or to be safely maintained in the home. The findings provide direction to the agency for devising a service plan for the family. The adjudicatory findings also provide a starting point for determining whether the parents have adequately responded to the problems which caused court intervention. This issue becomes crucial in determining when and if reunification can occur or if termination of parental rights should

be pursued. Because adjudicatory findings are crucial to case planning, the court must be careful to address all factual allegations set forth in the petition or complaint.

The court must also determine whether the responsible public agency has made reasonable efforts to prevent the need for placement of the child. The court must decide both whether the agency made reasonable efforts to prevent the need for the child's removal from home and, whether the agency is engaged in reasonable efforts to make it possible for the child to safely return home. The "reasonable efforts" determination is required by federal law, as a condition for state receipt of federal foster care matching funds.[1] It is also required by statute in most states.[2]

F. Additional Decisions at the Adjudication Hearing

If the disposition hearing will not occur within a short time after the adjudication hearing, the judge may need to make additional temporary decisions at the conclusion of adjudication. For example, the judge may need to:

- Determine where the child is to be placed prior to disposition hearing;
- Order further testing or evaluation of the child or parents in preparation for the disposition hearing;
- Make sure that the agency is, in preparation for disposition, taking prompt steps to evaluate relatives as possible caretakers, including relatives from outside the area;
- Order the alleged perpetrator to stay out of the family home and have no contacts with the child; and
- Direct the agency to continue its efforts to notify noncustodial parents, including unwed fathers.

If the child is to be in foster care prior to disposition, the judge also may need to set terms for visitation, support, and other intra-family communication pending disposition. This may include both parent-child and sibling visits. Visitation and other communication is critical to preserving and maintaining family relationships during the period of separation. Terms of visitation also must protect the safety of the child.

G. The Court's Written Findings of Fact and Conclusions of Law at the Adjudication Hearing

As explained previously in the section on admissions and stipulations, it is important that the adjudicatory findings accurately reflect the reasons for state intervention. While findings need not include details of abuse or neglect (e.g., the size and shape of bruises due to excessive corporal punishment), findings do need to provide enough detailed information to justify agency and court choices for treatment and services. The findings must be specific so that, at a later time, there will be a defensible basis for refusing to return a child home or terminating parental rights if parents fail to improve. It is also imperative that all parties understand the court's findings and how they relate to subsequent case planning.

H. Conclusion

A timely, careful and complete adjudication hearing can benefit each child and family before the court by:

- Resolving disputed issues of fact in a timely manner at the adjudication hearing and addressing all the allegations set forth in the petition, the court avoids unnecessary delays that arise when the parents and agency cannot agree on what problems need to be resolved for reunification to occur or for the children to remain safely at home.
- Making a timely decision as to whether the agency is able to prove its case at the adjudication hearing, the court reduces the time that children may unnecessarily spend in foster care in those cases where the agency's case is ultimately dismissed.

• Conducting a timely hearing, the court emphasizes by its example the importance of time in the lives of the children involved and the need to move the case towards successful completion as soon as practicable.

Enough time must be set aside for the completion of careful and complete adjudication hearings. Each court must determine the typical range in length of hearings and establish a calendar to accommodate such hearings without the need for routine postponements and delays. Courts must require that all necessary participants be present and on time. In determining the number of judges needed in organizing the court calendar, the court must calculate both the frequency of hearings and their average length.

I. Resource Guideline

It is recommended that a minimum of 30 minutes be allocated for each adjudication hearing.

Hearing Activity	Time Estimate
1. Introductory Remarks • introduction of parties • advisement of rights • explanation of the proceeding	2 Minutes
2. Adequacy of Notice and Service of Process Issues	3 Minutes
3. Testimony in Support of Admission Stipulation • caseworker testimony • testimony by parents and other witnesses • expert witness testimony (as necessary)	10 Minutes
4. Service Update/Immediate Service Plan • reasonable efforts finding • adjustment of the child to placement • family preservation services • visitation	5 Minutes
5. Troubleshooting and Negotiations Between Parties • judge-attorney conferences • ensuring parents understand content and consequences of plea/stipulation • resolution of any paternity and child support issues	5 Minutes
6. Issuance of Orders and Scheduling of Next Hearing • order assessments and evaluations required for case disposition • preparation and distribution of additional orders to all parties prior to adjournment	5 Minutes
Minimum Time Allocation	30 Minutes

J. Adjudication Hearing Checklist

Persons who should always be present at the adjudication hearing:

- Judge or judicial officer
- Parents whose rights have not been terminated, including putative fathers
- Relatives with legal standing or other custodial adults
- Assigned caseworker
- Agency attorney
- Attorney for parents (separate attorneys if conflict warrants)
- Legal advocate for the child and/or GAL/CASA
- Court reporter or suitable technology
- Security personnel

Persons whose presence may also be needed at the adjudication hearing:

- Age-appropriate children
- Extended family members
- Adoptive parents
- Judicial case management staff
- Law enforcement officers
- Service providers
- Other witnesses

Key decisions the court should make at the adjudication hearing:

- Which allegations of the petition have been proved or admitted, if any;
- Whether there is a legal basis for continued court and agency intervention;
- Whether reasonable efforts have been made to prevent the need for placement or to safely reunify the family.

Additional decisions at the adjudication hearing:

If the disposition hearing will not occur within a short time after the adjudication hearing, the judge may need to make additional temporary decisions at the conclusion of adjudication. For example, the judge may need to:

- Determine where the child is to be placed prior to disposition hearing;
- Order further testing or evaluation of the child or parents in preparation for the disposition hearing;
- Make sure that the agency is, in preparation for disposition, taking prompt steps to evaluate relatives as possible caretakers, including relatives from outside the area;
- Order the alleged perpetrator to stay out of the family home and have no contacts with the child;
- Direct the agency to continue its efforts to notify noncustodial parents, including unwed fathers;
- When the child is to be in foster care prior to disposition, set terms for visitation, support, and other intra-family communication including both parent-child and sibling visits.

The court's written findings of fact and conclusions of law at the adjudication hearing should:

- Accurately reflect the reasons for state intervention.
- Provide sufficiently detailed information to justify agency and court choices for treatment and services.
- Provide a defensible basis for refusing to return a child home or terminating parental rights if parents fail to improve.
- Be written in easily understandable language so that all parties know how the court's findings relate to subsequent case planning.
- Set date and time of next hearing, if needed.

K. Endnotes

1. See 42 USC §§ 672(a)(1), 671(a)(15).

2. For a general discussion of the reasonable efforts requirement, see National Council of Juvenile and Family Court Judges et al., Making Reasonable Efforts: Steps for Keeping Families Together (New York: The Edna McConnell Clark Foundation, 1987); Debra Ratterman et al., Reasonable Efforts to Prevent Foster Placement: A Guide to Implementation (Washington, D.C.: American Bar Association, 1987).

V. Disposition Hearings

DISPOSITION HEARINGS TABLE OF CONTENTS

A. Introduction

Disposition is the stage of the juvenile court process in which, after finding that the child is within jurisdiction of the court, the court determines who shall have custody and control of the child. Depending upon the powers and responsibilities of the court under state law, the court may set additional conditions concerning the child's placement and may issue specific directions to the parties.

Court proceedings to determine disposition are a crucial part of the juvenile court process. At disposition the court makes the decision whether to continue out-of-home placement or to remove a child from home. A full examination of this issue is needed, including an examination of the agency's plan to protect the child from further harm, to prevent placement and to determine safe alternatives to placement. Based on this examination, the court can then evaluate whether these agency actions constitute reasonable efforts to prevent placement. Dispositional reports and written case plans that address these issues are needed to help the court and parties evaluate the question of removal.

When the court decides to place a child outside the home, additional steps are needed to minimize the harm of separation. The court should set terms for appropriate visitation and parent-child communication. The court may need to specify services needed to help the child deal with the trauma of separation and to deal with the child's other special needs. When the separation of siblings is unavoidable, visitation and communication between siblings must be addressed during disposition.

Decisions at disposition should help the agency and parents develop an appropriate plan to address the specific problems which necessitated state intervention in the case. While adjudication should identify the problems justifying court involvement, disposition should make sure that the parties work out a plan to resolve them. The court should ensure that the agency and court do not work at cross purposes.

Disposition should set a framework for review. Effective dispositional proceedings enable review proceedings to evaluate progress in the case. Where the family problems can be clearly described, appropriate services can be identified, and appropriate objectives can be chosen, this will provide a clear focus for subsequent review hearings.

The precision with which the needed changes and remedial steps can be identified at disposition depends on the timing of the disposition hearing and the nature of the family problems. If the family problems are not yet fully known, the case plan may need to set up further evaluation rather than to set concrete behavioral goals for parents. If family problems are already clear, it is appropriate for the court to state in some detail what the parties are expected to accomplish. Where the agency and parents have already worked out an initial case plan by the time of the disposition hearing, it may be desirable for the court to incorporate particular provisions of the plan into its written findings of fact and conclusions of law.

B. Need for Separate Proceeding at Disposition

Disposition should be considered separately from adjudication because a separate or bifurcated hearing assures that there will be appropriate focus on dispositional issues such as removal of the child and visitation. When adjudicatory and dispositional functions are not separated, emphasis often falls on the placement decision at the expense of other dispositional issues. This can result in court authorization of removal without careful consideration of alternatives such as in-home services. The hearing process must be structured to make it more likely that dispositional issues will be explicitly addressed.

Whether the petition has been sustained, and what is to happen next to the child, are two distinct determinations that need to be examined separately in order to accord full consideration. The two decisions are as distinct from one another as a finding of guilt is distinct from sentencing in a criminal case. It is important that they not be blurred.

Special reports often prepared for the

disposition hearing address issues of placement, visitation, and services. These reports typically contain hearsay information or information that does not comply with other rules of evidence. It is unfair for these reports to be considered at adjudication. At disposition, the court needs time to consider them properly.

C. Timing of Disposition

Disposition should occur quickly. Often a decision on disposition is necessary before significant case planning can begin. This is particularly true when the need for out-of-home placement is contested. When a child is in emergency placement, it is imperative that there be a careful decision on placement as soon as possible so that children do not spend unnecessary time away from their homes. Adjudication and disposition should be separate functions, but it may be appropriate to allow the disposition hearing to follow in a bifurcated manner immediately after the adjudicatory phase of the process if: (a) all required reports are available and have been received by all parties or their attorneys at least five days in advance of the hearing; and (b) the judge has had the opportunity to review the reports after the adjudication.

Often a decision on disposition is necessary before significant case planning can begin.

The dispositional decision need not determine an inflexible list of services and assistance to be provided to the child and the family. In many cases, the disposition hearing determines only the services and assistance to be provided at an early stage of the case. Ongoing evaluation and work with the family will develop this further, and the dispositional decision will be revised during subsequent case reviews. Therefore, there is no need to postpone the decision in order to achieve resolution of every issue.

Disposition should be completed within 30 days after adjudication, except where extensions of time are required for such reasons as newly discovered evidence, unavoidable delays in obtaining critical witnesses, and unforeseen personal emergencies of parties or counsel.

D. Agreements by the Parties

When parties admit the allegation of the petition or stipulate to a set of facts for the adjudication, they often also submit a stipulated dispositional order at the same time. When a combined stipulation of adjudication and disposition is proposed to the court, the judge should take special care that the stipulation is complete and well-considered. The stipulation should address not only the facts supporting child placement, care, and treatment decisions, but also what actions and progress are expected of the parties.

Whenever disposition is being stipulated rather than tried by the court, the court should ensure that the issues of disposition have been thoroughly considered by all parties, especially both parents. Case planning should continue to progress as if a contested disposition hearing had been concluded. When a proposed dispositional agreement is not complete, the parties should be required to work out the issues or to present them to the court for resolution.

The degree of detail to be included in the stipulated disposition should be consistent with the requirements concerning findings of fact and conclusions of law for contested dispositions. The character of the dispositional findings and orders may vary according to the constitutional and statutory powers of the court over disposition. The specificity also may depend upon the amount of time which has elapsed since the state first became involved in the case.

E. Who Should Be Present

Different witnesses may be required to address dispositional issues as opposed to those who were needed at adjudication. Because the disposition hearing determines whether the state has made reasonable efforts to avoid the need for placement and what services are needed, service providers will be needed as witnesses if there are factual disputes concerning these issues.

As mentioned in preceding sections on preliminary protection and adjudication hearings, among those who should always be present are:

- Judge or judicial officer
- Parents whose rights have not been terminated, including putative fathers
- Relatives with legal standing or other custodial adults
- Assigned caseworker
- Agency attorney
- Attorney for parents (separate attorneys if conflict warrants)
- Legal advocate for the child and/or GAL/CASA
- Court reporter or suitable technology
- Security personnel

As previously mentioned in recommendations on preliminary protection and adjudication hearings, among those whose presence may also be needed are:

- Age-appropriate children
- Extended family members
- Adoptive parents
- Judicial case management staff
- Law enforcement officers
- Service providers
- Adult or juvenile probation or parole officer
- Other witnesses

Because the disposition hearing focuses on the future well-being of the child, it is often helpful to have persons present who may be called upon to care for the child or work with the family. These might include a homemaker, public health official, mental health professionals, other service providers, close family friends, responsible relatives, and personnel from any government agency in contact with the child or family.

Government representatives can provide the court with comprehensive information on particular aspects of family functioning, and may help identify additional resources available to assist the child or family.

Judges should instruct the agency to bring appropriate persons to the disposition hearing, issuing subpoenas if necessary. If necessary parties and key witnesses fail to appear, the hearing should be scheduled at the earliest possible time, and incentives identified to ensure complete participation at the rescheduled hearing.

F. Submission of Reports to the Court

In most states, rules regarding the competence of evidence apply in adjudication hearings but not in disposition hearings. As a result, written reports inadmissible as hearsay generally cannot be considered by the court at the adjudicatory phase. At the disposition hearing, however, written reports generally can be considered by the court. These might include reports submitted by a guardian ad litem/Court Appointed Special Advocate (GAL/CASA) appointed for the child, or psychological, medical, developmental, educational or other reports or evaluations ordered at the adjudicatory stage.

The submission of these reports prior to the disposition hearing can serve several purposes. The process of report-writing can tighten a social service agency's own analysis of a case. Submission of written reports by agency workers and other specialists can assist the parties and their counsel to think about and contribute to the dispositional decision. Written reports can also be of direct help to the judge in reaching a decision.

It is important that the agency report be distributed to the parties well in advance of the disposition hearing, allowing the parties time to consider agency proposals for disposition. This enables the parties to develop alternatives, call witnesses, and subpoena and cross examine persons who provided information relied upon in the agency's report. Early submission of the report can improve the parties' understanding of dispositional issues and enable them to more effectively contribute to the dispositional decision, enhancing the deliberations and decisions of the court.

The court should set rules or develop forms regarding both the timing and content of agency predisposition re-

ports. Strict deadlines are needed to ensure that the report is submitted to the parties far enough in advance of the hearing to give them an opportunity to investigate its statements and propose alternatives. Without such deadlines, agency workers may conclude that reports are not required until the disposition hearing or shortly before.

If statutory requirements are insufficient, the court should regulate the content of predisposition reports through court rules or forms. In developing such rules or forms, the court should consult closely with responsible child welfare agency.

Among other things, the predisposition report should include the following:

- A statement of family changes that are needed to correct the problems necessitating state intervention, with timetables for accomplishing them;
- A description of services to be provided to assist the family; and
- A description of actions to be taken by parents to correct the identified problems.

When the agency recommends foster placement an affidavit of reasonable efforts should be submitted. The following are some additional key elements of the report:

- A description of the efforts made by the agency to avoid the need for placement and an explanation why they were not successful;
- An explanation why the child cannot be protected from the identified problems in the home even if services are provided to the child and family;
- Identification of relatives and friends who have been contacted about providing a placement for the child.

Other information that should be included either in the affidavit of reasonable efforts or an accompanying court report is:

- A description of the placement and where it is located;
- Proposed arrangements for visitation;
- Placement of the child's siblings and, if they are to be apart, proposed arrangements for visitation;
- An appropriate long-term plan for the child's future; and
- Proposed child support.

Court rules and forms for predisposition reports should be carefully designed to assist judges in preparing written findings of fact and conclusions of law. The form used for the agency report should be precisely worded to address the exact issues. This allows the judge, when appropriate, to incorporate by reference the agency form. It also helps ensure that the oral submissions by the agency will assist the court in the preparation of its findings.

G. Key Decisions the Court Should Make at the Disposition Hearing

The key decision in a disposition hearing is whether a child must be placed away from home. The court must decide whether there are ways of fully protecting the child in the home, including consideration of in-home services or intensive monitoring of the household.

If the child is to remain at home, the judge usually needs to impose specific conditions on both the parents and the agency. In considering conditions to be imposed on the agency, the judge should determine what agency supervision will be needed for the child's protection and what services will be provided.

There are several issues of parental responsibility when a child is allowed to remain at home. The court usually needs to impose specific behavioral directives upon the parents and to clarify their obligations to cooperate with the child welfare agency. In many cases, the judge must also establish or modify the child support obligations and visitation rights of the non-custodial parent. In some cases, the judge may need to issue a no-contact order for the child's protection. At disposition, unresolved issues of paternity and child support

must be examined and addressed.

There are a number of critical issues when children are to be removed from home. Primarily, the court must determine custody of the child, either to a relative or other responsible adult with or without ongoing agency supervision.

If the agency is to have custody of the child, the court may need to set specific conditions concerning the child's placement, depending on whether the judge has this responsibility under state law. For example, the court may require the child to be placed in a certain type of home or facility, to be placed with siblings, or even to be placed in foster care with a specific relative or family friend if that person meets agency foster care licensing requirements.

Other important issues for the judge to determine when a child is placed away from home include parental and sibling visitation and communication, and the types of services to be provided to the family. In some cases, disposition is not too early for the judge to specify what parental improvement is required before the child will be allowed to come home. In many states, a detailed case plan must be approved by the judge either during or soon after disposition hearing.

All of the key decisions that were addressed at the preliminary protective hearing are revisited at the disposition hearing. In the course of evaluating these issues, the court must make formal legal decisions regarding the following:

• What is the appropriate statutory disposition of the case and long-term plan for the child?

If a child is adjudicated abused or neglected, a long-term plan must immediately be developed to guide agency and court decision-making on the child's behalf. A number of dispositional alternatives must be coordinated with the long-term plan for the child. The court may allow the child to remain in the home of a parent, relative, or other responsible adult, subject to orders of protective supervision. This is an appropriate disposition when the child can remain safely at home with the provision of special services or court orders regulating the conduct of the parents.

The court may grant an agency custody of a child for placement into foster care. This is an appropriate disposition when the child cannot yet be safely returned home, but reunification may occur at a future date after the parents have addressed problems that caused the placement of the child. This may also be an appropriate disposition when the plan is to work towards placement of the child with a relative who is unable to assume immediate custody.

The court may choose to award custody of a child to a relative or other responsible adult. This is an appropriate disposition when the long-term plan is for the child to be raised by that relative or other individual and further agency involvement is not planned.

In some states, the agency may request termination of parental rights in the original petition. In such cases, the court may grant the motion for termination at disposition if statutory grounds for termination are satisfied, thereby freeing the child for adoption. This disposition is appropriate when: a) reunification with the parent clearly is not possible within a reasonable time frame even if reunification services are provided, b) there are no appropriate relatives who can assume custody of the child, and c) there is a reasonable probability that the agency can secure an adoptive home for the child. When parental rights are terminated, the long-term plan for the child nearly always should be placement in a permanent adoptive home.

• Where should the child be placed?

When a child, for safety reasons, cannot be placed with a family member, the best alternative placement must be sought, pending reunification with a parent or completion of another long-term plan for the child. The court must decide whether the type of placement proposed by the agency is the least disruptive, most family-like, and meets the needs of the child. Among factors affecting placement suitability are the potential for the placement to facilitate timely family reunification; the maintenance of sibling groups in a single

placement; the primary language spoken by a child in need of placement; and geographic proximity to family members, schools and friends.

Courts should first seek to place children with relatives, when placement with a parent is not possible. If a relative placement is unavailable, then a foster home placement should be considered. Residential or group home placements may be necessary for children unable to function in a family-like setting, when less disruptive placements are unavailable, or when they are the only type of placement which would allow siblings to remain together.

When parental rights are terminated, the long-term plan for the child nearly always should be placement in a permanent adoptive home.

- **Does the agency-proposed case plan reasonably address the problems and needs of child and parent?**

At the time of the preliminary protective hearing, the agency probably will not have had sufficient time or information to develop a complete, written case plan. By the time of the disposition hearing, however, the agency should be required to present a written case plan which addresses all aspects of the agency's involvement with the family. A key decision to make at the disposition hearing is whether to approve, disapprove or modify the case plan proposed by the agency.

If approval of the case plan is a function assigned to the court by state law, the case plan should identify problems to be resolved before the court's involvement ends; changes in parental behavior that must be achieved; services to be provided to help achieve these changes; and the deadlines and respective responsibilities of each party in providing services and achieving case plan goals. The case plan should also identify any special needs of the child and the services to be provided to meet those needs. Finally, the case plan should set forth the terms and conditions of the parents' visitation.

The court should actively review the case plan to determine whether the plan is comprehensive in identifying all the problems that need to be addressed to meet the needs of the entire family, whether the plan defines clear, objective and measurable behavioral changes to be achieved, and whether the services proposed are the best available to bring about the necessary changes in behavior. The court should take time in reviewing the plan to make certain that all parties understand the plan and what is expected of them in the plan. If the court is dissatisfied with the plan proposed by the agency, it can reject the plan and require the agency to submit a new plan.

If empowered to do so under state law, the court can order modifications of the proposed plan. For example, the court might modify the plan if parties dispute its terms and the evidence sustains their position. The court might determine that the plan fails to meet legal requirements. The court might modify the plan because services to be provided are not related to the abuse or neglect leading to court intervention.

If the court enters an order requiring the agency to provide a placement or services not suggested by the agency, the court should make sure the order is clear and includes findings or conclusions setting forth the basis for the order. In particular, the court should set forth the legal or evidentiary basis for its decision. The court should make sure that the agency ordered to provide the services had notice and the opportunity to be heard.

- **Has the agency made reasonable efforts to eliminate the need for placement or prevent the need for placement?**

This issue should be addressed at every stage of the hearing process. After examination of agency efforts at the preliminary protective hearing, and again at the adjudicatory hearing, the court must again at the disposition hearing examine and determine the reasonableness of agency efforts to rehabilitate and reunite the family. Major changes in family functioning, membership, finances, attitude, skills and other pertinent developments can be made be-

tween court hearings. Although statutory requirements differ from state to state, a judicial determination of reasonable efforts to eliminate the need for placement is good practice at each stage of the dependency process.

- **What, if any, child support should be ordered?**

The court should order child support for children in foster care whenever parents are able to help cover the costs of this substitute care. Child support should be addressed in the disposition order unless the state sets child support determinations through a different forum for children in foster care.

Child support obligations of parents with children in foster care should not be unduly burdensome. When setting support amounts, the court should consider any special financial costs arising from foster care placement. Such costs might include the maintenance of extra living space in preparation for the child's return home, services to facilitate the child's safe return home, transportation to family visits or to participate in services, and time off work to allow participation in services.

- **When will the case be reviewed?**

After the disposition hearing is completed, the court will need to set additional hearings to review progress toward case plan goals, and to make timely changes or corrections in the case plan. The next review hearing should be set at the conclusion of the disposition hearing, although parties to the case may request a case review hearing at any time. The court may request that the parties submit written progress reports at specified dates concerning case plan progress or other ongoing issues in the case.

H. The Court's Written Findings of Fact and Conclusions of Law at the Disposition Hearing

Detailed dispositional findings can help to structure the court's decision-making, establish a more complete record, and encourage more thorough consideration of the decision to place a child away from home. The burden of preparing findings can be reduced by ensuring that the agency's dispositional report covers the same issues as the court's findings. If the agency report is well-prepared and supported, the court can repeat, modify, or refer to portions of the report in its findings.

When there has been a recommendation that a child be placed outside the home, judicial findings should address the feasibility of in-home services as an alternative to removal. This should be expected by the parties. When the court consistently makes findings concerning whether in-home services can or cannot prevent the need for placement, the agency is encouraged to be more diligent and thorough in exploring possible safe alternatives to removal. Determining whether available services can prevent the need for removal is also very closely related to the federally required judicial determination of reasonable efforts to prevent placement and, after placement, to make it possible for the child to safely return home.

The court's written findings of fact and conclusions of law at the disposition hearing should:

- Determine the legal disposition of the case, including the custody of the child, based upon the statutory options provided under state law.
- State the long-term plan for the child (e.g., maintenance of the child in the home of a parent, reunification with a parent or relative, permanent placement of child with a relative, placement of the child in a permanent adoptive home.)
- When applicable, specify why continuation of child in the home would be contrary to the child's welfare.
- Where charged with this responsibility under state law and based upon evidence before the court, approve, disapprove or modify the agency's proposed case plan.
- Determine whether there is a plan for monitoring the implementation of the service plan and assuming the child's continued well-being? Is a GAL/CASA available to do this?
- When placement or services are ordered that were not agreed upon by the parties, specify the evidence or legal basis upon which the order is made.
- Specify whether reasonable efforts have been made to prevent or eliminate the need for placement.
- Specify the terms of parental visitation.
- Specify parental responsibilities for child support.
- Be written in easily understandable language so that parents and all parties fully understand the court's order.
- Set date and time of next hearing, if needed.

I. Conclusion

A timely, careful and complete disposition hearing can benefit each child and family before the court by:

- Providing the time necessary to develop a comprehensive case plan which addresses all issues in need of resolution, which carefully identifies the responsibilities of all parties, and which incorporates the legitimate concerns and interests of all parties. This allocation of time and careful case planning increases the likelihood that the plan will be successfully implemented in a timely manner.
- Devoting the time to develop a carefully drafted and comprehensive case plan, the court reduces the need to schedule subsequent hearings to make changes and corrections in the plan.
- Carefully devising a case plan and identifying appropriate services, the court may, at the conclusion of the disposition hearing, be able to return children to their parents' home with protective orders.
- Enough time must be allocated for the completion of careful and complete contested disposition hearings. Each court must determine the typical range in length of contested hearings and establish a calendar to accommodate such hearings without the need for routine postponements and delays. Courts must require that all necessary participants be present and on time. In determining the number of judges and in organizing the court calendar, the court must calculate both the frequency of contested hearings and their average length.

J. Resource Guideline

It is recommended that a minimum of 30 minutes be allocated for each disposition hearing.

Hearing Activity	Time Estimate
1. Introductory Remarks • introduction of parties • advisement of rights • explanation of the proceeding	2 Minutes
2. Adequacy of Notice and Service of Process Issues	3 Minutes
3. Reasonable Efforts Findings	5 Minutes
4. Adequacy of the Agency Case Plan • parental conditions • agency conditions • visitation plan • service plan for child and family • long-term plan	10 Minutes
5. Troubleshooting and Negotiations Between Parties • discuss with parents the specifics of the case plan to ensure that they understand what is expected of them • determine ways that the agency and the court can assist parents in complying with the case plan	5 Minutes
6. Issuance of Orders and Scheduling of Next Hearing • issue disposition order addressing custody • schedule review and permanency planning hearings • preparation and distribution of additional orders to all parties prior to adjournment	5 Minutes
Minimum Time Allocation	30 Minutes

K. Disposition Hearing Checklist

Persons who should always be present at the disposition hearing:

- Judge or judicial officer
- Parents whose rights have not been terminated, including putative fathers
- Relatives with legal standing or other custodial adults
- Assigned caseworker
- Agency attorney
- Attorney for parents (separate attorneys if conflict warrants)
- Legal advocate for the child and/or GAL/CASA
- Court reporter or suitable technology
- Security personnel

Persons whose presence may also be needed at the disposition hearing:

- Age-appropriate children
- Extended family members
- Adoptive parents
- Judicial case management staff
- Law enforcement officers
- Service providers
- Adult or juvenile probation or parole officer
- Other witnesses

Submission of reports to the court. Predisposition reports should include:

- A statement of family changes needed to correct the problems necessitating state intervention, with timetables for accomplishing them;
- A description of services to be provided to assist the family; and
- A description of actions to be taken by parents to correct the identified problems.

When the agency recommends foster placement, an affidavit of reasonable efforts should be submitted. The following are some additional key elements of the affidavit:

- A description of the efforts made by the agency to avoid the need for placement and an explanation why they were not successful;
- An explanation of why the child cannot be protected from the identified problems in the home even if services are provided to the child and family;
- Identification of relatives and friends who have been contacted about providing a placement for the child.

Other information that should be included either in the affidavit of reasonable efforts or an accompanying court report is:

- A description of the placement and where it is located;
- Proposed arrangements for visitation;
- Placement of the child's siblings and, if they are to be apart, proposed arrangements for visitation;
- An appropriate long-term plan for the child's future; and
- Proposed child support.

Key decisions the court should make at the disposition hearing:

- What is the appropriate statutory disposition of the case and long-term plan for the child?
- Where should the child be placed?
- Does the agency-proposed case plan reasonably address the problems and needs of child and parent?
- Has the agency made reasonable efforts to eliminate the need for placement or prevent the need for placement?
- What, if any, child support should be ordered?
- When will the case be reviewed?

The court's written findings of fact and conclusions of law at the disposition hearing should:

- Determine the legal disposition of the case, including the custody of the child, based upon the statutory options provided under state law.
- State the long-term plan for the child (e.g., maintenance of the child in the home of a parent, reunification with a parent or relative, permanent placement of child with a relative, placement of the child in a permanent adoptive home.)
- When applicable, specify why continuation of child in the home would be contrary to the child's welfare.
- Where charged with this responsibility under state law and based upon evidence before the court, approve, disapprove or modify the agency's proposed case plan.
- Determine whether there is a plan for monitoring the implementation of the service plan and assuming the child's continued well-being. Is a GAL/CASA available to do this?
- When placement or services are ordered that were not agreed upon by the parties, specify the evidence or legal basis upon which the order is made.
- Specify whether reasonable efforts have been made to prevent or eliminate the need for placement.
- Specify the terms of parental visitation.
- Specify parental responsibilities for child support.
- Be written in easily understandable language so that parents and all parties fully understand the court's order.
- Set date and time of next hearing, if needed.

VI. Review Hearings

REVIEW HEARINGS TABLE OF CONTENTS

A. Introduction

Review hearings are the court proceedings which take place after disposition and in which the court comprehensively reviews the status of the case. Review is vital to cases involving each child within the court's jurisdiction, whether or not the child is in placement. At the conclusion of the disposition hearing the court identified a long-term goal for the child. If family reunification was the case goal, the original case plan approved at the disposition hearing should have identified behavioral changes required of the parents, services to be provided, a long-term plan for the child's future, and other appropriate details. Review hearings examine progress made by the parties since the conclusion of the disposition hearing. They also provide an opportunity for correction and revision of the case plan. The purpose of review hearings is to make sure that cases progress and that children spend as short a time as possible in temporary placement. No matter how carefully initial case planning is examined at the disposition hearing, periodic review is needed to keep cases moving toward successful completion.

Review hearings should re-examine long-term case goals and change any which are no longer appropriate. Just as review hearings should hasten family reunification when possible, they should also help identify cases in which reunification should be discarded as a goal because a child cannot safely be returned home in a timely fashion.

Review hearings are necessary because continuation of a child in foster care for an extended time has a negative affect on a child and family. A child in foster care forms new relationships which may weaken his or her emotional ties to biological family members. A child shifted among foster homes may lose the ability to form strong emotional bonds with a permanent family.[1] A careful decision concerning the future of every child is needed as soon as possible. Review hearings can help ensure that decisions concerning a child's future are made at regular intervals and implemented expeditiously.

Review hearings provide regular judicial oversight of children in foster care and can help judges identify inadequacies in government's response to child abuse and neglect. For example, incomplete case plans can prolong foster care placement by failing to clearly specify what each party must do to facilitate family reunification. Agency case plans may be based on boilerplate forms which fail to adequately document a case. A plan may be developed solely by agency staff, without the collaboration of parents or the child. A plan may fail to specify agency services or particular behaviors and changes expected of the parents.

Unresolved case disputes may block case planning progress. Each party may be proceeding unilaterally without confronting a disputed issue, although the dispute may constitute a roadblock to family reunification. When agency caseloads are high, cases may be neglected. If things are going "smoothly" in a child's foster home, appropriate attention may not be paid to family rehabilitation and progress toward reunification.

The agency may unnecessarily restrict parent-child contacts, accelerating breakdown of the parent-child relationship. Frequent parental visitation is essential but burdens agency caseworkers. Parents may be unaware that they can challenge visitation arrangements and may become discouraged by the terms imposed.

Agencies may fail to take timely action to move children out of foster care. Such inertia may be due to caution, indecision, or subtle incentives to maintain the legal status quo. Bringing a termination of parental rights proceeding is time consuming and may even appear forbidding to individual caseworkers. Without prodding by foster care review, workers may forego legal action.

Effective review hearings can address each of these problems and can improve planning for children. Judicial review helps a case progress by requiring the parties to set timetables, take specific action, and make decisions. Review hearings provide a forum for the parents, helping assure that their viewpoint is considered in case planning. Through

careful scrutiny of the case plan by the attorneys and the court, case content and planning problems can be identified. Terms of the plan can be specified so that all parties understand their obligations and the court can assess progress.

Regular and thorough review hearings create incentives for the agency to make decisions concerning the permanent status of a child. When the review hearing is challenging and demanding, greater consideration is given to the examination of all placement options. Review hearings also create a valuable record of the actions of the parents and agency. Current information is put on the record and is more likely to be freely exchanged at a review than in proceedings to terminate parental rights or to compel family reunification.

Unfortunately, there are a number of formidable pitfalls that can thwart effective review hearings. Regular review hearings consume a great deal of time. Careful docket management and appropriate judicial caseloads are needed to prevent caseworkers, parents, attorneys, and other parties from having to spend long hours in the courthouse waiting for review.

Reviews can malfunction as a rubber stamp of agency recommendations or produce arbitrary decisions based on inadequate information. Effective review requires adequate court time and properly paid and trained lawyers to collectively determine what information comes before the court. Lawyers must be expected to do their job and come to court with a clear position on the case. If volunteers such as guardians ad litem or court appointed special advocates (GAL/CASAs) are assigned, they should be prepared to make a recommendation as to the best interests of the child.

Irregular review may inhibit agency case planning. Long delays between court hearings and unnecessarily complex court orders may deprive the agency and the parents of the flexibility needed to move forward. For example, if a court orders parents to participate in a particular program which proves to be inappropriate, the parent is under a continuing obligation to remain in the program until the case is brought back to court. Parties must have the means to obtain timely review.

Federal law requires that reviews be conducted by either a court or an "administrative body," such as an agency team or a panel of volunteer citizen reviewers.[2]

It is optional under federal law whether courts conduct the routine review hearings.

Federal law contemplates a routine but thorough review of case progress to make sure cases are not neglected and, if necessary, to refine case plans. Specifically, review is:

...to determine the continuing necessity for and appropriateness of the placement, the extent of compliance with the case plan, and the extent of progress which has been made toward alleviating or mitigating the causes necessitating placement in foster care, and to project a likely date by which the child may be returned to the home or placed for adoption or legal custody.[3]

States that require courts to conduct periodic review hearings must make sure that courts are able to perform this function properly.

Some states have chosen not to have judges conduct reviews. The best alternative or complement to judicial review is review by panels of judicially appointed citizen volunteers. Whatever form of review is used, it is critical that the parties be present and that questioning is conducted with rigor. Members of citizen review panels should be carefully recruited, screened, trained and supervised by court personnel. Citizen review panels should be judicially appointed and supervised. There should be an adequate ratio of court staff to volunteers and there should be at least one panel per 100 children to be reviewed. A professional staff person should be present at all panel reviews.

B. Timing of Review

Timetables for review hearings are governed by both federal and state statute. Federal law specifies that review of children in foster care (by a court or administrative body) must occur at least once every six months.[4] Some state stat-

utes require more frequent oversight and many courts conduct case review more frequently than statutes require.

Frequent review hearings require that courts have sufficient personnel to conduct the hearings properly. Whatever the frequency of mandatory review, the court should have the ability to conduct hearings more frequently than the minimum intervals. Where review hearings are mandated at least every six months, it should still be common to hold reviews at two or three month intervals at particularly critical stages of a case. In special circumstances, it also should be common to bring matters back to court on short notice.

C. Agreements by the Parties

Whenever issues presented at a review are stipulated rather than tried by the court, the court should take the time to thoroughly review the agreement with the parties. The court should ensure that all review issues have been thoroughly considered by all parties, especially both parents, if involved. If the parties' agreement is not comprehensive, the court may need to hear evidence to resolve disputes. The court might also adjourn the hearing to give the parties time to resolve issues or present them to the court for a decision.

If the court conducts frequent review hearings, any agreed statement of facts should convey the recent history of the case. The history should include an agreed statement concerning services provided to the child and family since the last hearing, actions taken by the parents in accord with the case plan, and progress made toward ending state intervention. This provides a definitive record of what has occurred since the previous disposition or review. This record will be invaluable later in the case when it is necessary to decide whether to reunite the family or terminate parental rights.

If the parties have reached agreement as to future steps to be taken, the court should either make sure that the agreement is comprehensive or resolve any issues not considered. A comprehensive agreement might include such issues as placement, services to the child, services to the family, visitation (where applicable), agency oversight of the family, location of missing parents, determination of paternity. (For a more complete listing and discussion of issues to be addressed during a review, see Section E entitled "Key Decisions the Court Should Make at Review.")

D. Who Should Be Present

Persons who should always be present at review hearings:

- Judge or judicial officer
- Parents whose rights have not been terminated, including putative fathers
- Age-appropriate children
- Relatives with legal standing or other custodial adults
- Foster parents
- Assigned caseworker
- Agency attorney
- Attorney for parents (separate attorneys if conflict warrants)
- Legal advocate for the child and/or GAL/CASA
- Court reporter or suitable technology
- Security personnel

Judge or judicial officer

Although states can comply with the review requirements of federal law through a citizen or administrative review process, it is important that when review hearings are conducted by the court, they are conducted by the same judge or judicial officer who hears other stages of the proceedings. The involvement of one judge creates consistency in the directions given the family and agency, avoids rehashing old arguments, and allows the judge or judicial officer who presides over the review to be thoroughly familiar with the facts adduced from previous hearings.

Parents whose rights have not been terminated, including putative fathers (or other persons with whom the agency is working toward reunification, such as potential adoptive parents)

If the court-approved plan is to re-

unify the child with a parent, whether or not the child lived with the parent prior to placement into foster care, it is essential for that parent to participate in the review. Parents can provide the court with important information concerning their perception of problems encountered in completing tasks or obtaining services, difficulties encountered in working with the agency, and concerns they may have regarding the care of their children. Such information is essential to the participation of parents in the case planning process. Parents must be present to receive information from the court and agency. At the review, the parents can receive important feedback from the court and agency as to what tasks must be completed and when.

Age-appropriate children

Children should be present at some point during the hearing to give the judge the opportunity to observe them. Age-appropriate children can provide the court with information as to their perception of their needs, interests and concerns. Older children will often have questions regarding their circumstances, the case plan, and projected time frames for achieving case plan goals. Their questions can be answered at review. A court may choose to have children present only during portions of a hearing. Special circumstances may infrequently justify the absence of children from an entire hearing.

Relatives with legal standing or other custodial adults

Relatives with legal standing, representatives of placement facilities where children are placed, or other custodial adults who work directly with children can often provide valuable information at review concerning adjustment of children to placement, their special needs, and additional services required.

Foster parents

Foster parents who care for and observe children on a daily basis are often in the best position to describe the present status of a child. Foster parents should be present both to make this information available to the judge, and to give the judge the opportunity to observe the foster parents.

Assigned caseworker

The caseworker with primary responsibility for the case must be present to provide the court with complete, accurate, and up-to-date information at the hearing. Judges should not continue or delay a review hearing due to lack of information or case involvement by a caseworker. When important facts are not known, the hearing should be reset for an early date, and, if necessary, appropriate subpoenas should be issued.

Agency attorney

It is important that the agency have effective representation at the hearing because the court's decisions concerning the case plan are crucial to its success. Important information is elicited at the review hearing and the record established at that time can be critical to later case outcomes; an attorney is needed to help develop the record and note important evidence. The agency attorney also can further case progress by obtaining court ordered evaluations, excluding a perpetrator from a household, or obtaining information important to the case. Depending on the jurisdiction, the agency may be represented by an attorney employed by the agency, the state attorney general, the county attorney, or the county prosecutor.

Attorney for parents (separate attorneys if conflict warrants)

The presence of the parents' attorney at the review hearing is vital to make sure that the agency is carrying out its responsibility to assist the parents. The attorney needs to correct the record to avoid negative or inaccurate information about the parents. The attorney needs to make sure that the parents' interests and views are taken into account in all decisions on placement, visitation, services, and case plan modifications.

Legal advocate for the child and/or GAL/CASA

A well-trained legal advocate for the child and/or GAL/CASA must be

present to make sure that the child's interests are being protected and not being subordinated to the organizational needs of the agency or the convenience of agency personnel. The advocate also needs to ensure that the views of children are considered by the court.

Court reporter or suitable technology and Security personnel

As in other stages of the hearing process, these staffing and equipment resources should be available for all review hearings.

The following are persons whose presence may also be needed at reviews:

- Extended family members
- Adoptive parents
- Judicial case management staff
- Service providers
- Adult or juvenile probation or parole officer
- Other witnesses
- School officials

Service Providers

Persons who provide services to the parents and children, such as therapists, teachers, and parenting instructors, can often provide valuable information to the court concerning the family's progress and recommendations for additional services.

If a particular service provider is not available to attend the hearing, the court should make certain that the agency caseworker has obtained detailed information on the participation and progress of the parents in that service. Ideally, written reports from all service providers should be provided to the court.

It is often helpful for all persons who are involved with the family to meet with each other at the review so that everyone understands case plan goals and the treatment needs of the family. The involvement of service providers at reviews helps to coordinate services with court-approved treatment goals.

E. Key Decisions the Court Should Make at the Review Hearing

- **Whether there is a need for continued placement of a child.**

If a child is placed outside a parent's home, the court should determine the necessity of placement. In deciding whether the family can be safely reunited, the court should consider the extent to which the parents have engaged in and benefited from services outlined in the case plan; the capacity and willingness of the parents to care for the child; the extent to which changed parental behavior allows for the child's safe return home; the extent to which parental behavior may continue to endanger the child; the appropriateness of interactions between parents and children during visitation; and the recommendations of service providers. If the court determines that a child should not be returned home, the court should identify the additional progress which would allow a safe family reunification.

- **Whether the court-approved, long-term permanent plan for the child remains the best plan for the child.**

Not every case requires the same period of time to determine whether family reunification is possible. In some cases, circumstances compel a case to proceed immediately from complaint or petition to termination of parental rights. At review, it may immediately become clear that the case plan being pursued for the family is no longer feasible. For example, a plan of reunification with a parent would no longer be feasible if the whereabouts of the parent were unknown for a substantial period of time, if the parent were subject to long-term incarceration, or if the parent failed continuously over an extended period to remedy the problems that caused a child to be placed. When it becomes apparent that the plan approved at the disposition hearing is no longer the best plan for the child, the court should direct the agency to present a new permanent plan.

Whether family reunification is possible becomes clear much sooner in some cases than in others. To avoid unnecessary foster care, judges should not continue a goal of reunification after it is apparent that the goal cannot be achieved or cannot assure safety of the child.

- **Whether the agency is making reasonable efforts to rehabilitate the family and eliminate the need for placement of a child.**

When the case plan goal is family reunification, the agency should be held accountable for meeting its obligation to provide services to the family. The court should make specific factual findings as to what efforts the agency is making to eliminate the need for placement of the child and whether such efforts are reasonable. The court should identify any areas in which agency efforts are inadequate and set forth orders to address these inadequacies.

- **Whether services set forth in the case plan and the responsibilities of the parties need to be clarified or modified due to the availability of additional information or changed circumstances.**

It often becomes obvious at a review that the case plan should be revised to reflect changed circumstances or new information. Additional or different services may be needed than those identified in the original case plan.

If the parents have not complied with a court-ordered case plan, the judge should consider whether the parents were capable of complying. If so, it may be necessary to remind them of the prior order and explain that their continued non-cooperation may lead to the termination of their parental rights. The judge should also consider initiating contempt of court proceedings.

At the review the court can correct any misunderstood expectations. Before making the decision whether and how to revise the case plan, the judge should question the parents. Parents should be asked whether they can meet the plan requirements. Parents should also be informed of the risk of termination of parental rights or other permanent loss of custody should they fail to meet their responsibilities under the plan.

As a case approaches successful reunification, the case plan may need to be amended to reflect family reunification.

- **Whether the child is in an appropriate placement which adequately meets all physical, emotional and educational needs.**

The court should review information on the behavior and overall adjustment of each child to his or her placement and school. The court should also be informed of the specific services being provided to meet each child's physical, emotional and educational needs.

At a review, the court may receive information indicating that the needs of a child are not being met in the child's placement. For example, if a child's behavior is causing the possible disruption of a third foster home placement, it may be necessary for the court to direct the agency to pursue placement at a more specialized therapeutic foster home.

In some cases, a child experiencing difficulty in placement may be successfully maintained in that placement if additional services are provided. The child may require mental health counseling, a special education program at school, or other specialized services. The foster parent may benefit from respite care or training in managing difficult behaviors. If such services were not identified in the initial case plan, they should be court-ordered at the review.

- **Whether the terms of visitation need to be modified.**

As parents successfully engage in services and modify their behavior, it may be appropriate to provide less restrictive, more extensive visitation. As the time for reunification approaches, there is a need to expand visits to include overnight visits in the parents' home. The court should review the terms of visitation at the review to determine whether terms and conditions of visits should be modified.

- **Whether terms of child support need to be set or adjusted.**

Parents who are able to pay should be expected to help cover the costs of foster care. Support amounts should either be reviewed or adjusted during review hearings. The court should take care to avoid financial burdens that interfere with family reunification. Particularly inexpedient are delays in setting support followed by retroactive lump sum support orders. These often make it impossible for parents to maintain or to obtain residential space in preparation for the child's return home.

- **Whether any additional court orders need to be made to move the case toward successful completion.**

Additional court orders may be needed to move the case toward successful completion. For example, if one parent has successfully completed services, but the other has not, it may be possible to return the children to the one parent who has completed the case plan with orders limiting the contact of the other parent.

- **What time frame should be followed to achieve reunification or other permanent plan for each child.**

At the conclusion of the review, the court should always determine what additional actions are necessary to successfully complete the case plan goals and set forth reasonable time frames in which such actions should be completed. By setting deadlines, the court emphasizes the importance of time in the lives of children and makes clear the court's expectations. The time frames set forth in the court's written findings of fact and conclusions of law can later be used by the court to hold all parties accountable by requiring explanations when reasonable deadlines are not met. The court must also set the time and date for the next review.

F. Submission of Reports to the Court

The submission of pre-review reports by the child welfare agency and GALs/CASAs can serve the same purpose as predisposition reports. Report writing and submission assist the parties in analyzing the case, and help the judge reach a decision. It is important that reports be distributed to the parties well in advance of the review. This allows time for the parties to consider agency proposals, and allows the parties time to prepare for the hearing.

Rules or forms are needed regarding the timing and content of pre-review reports. Strict deadlines are needed to ensure that the report is submitted to the parties far enough in advance of the hearing to give them an opportunity to investigate its statements and propose alternatives.

When the agency recommends continued foster placement, an affidavit of reasonable efforts should be submitted to help ensure the reliability of the report.

The following are some key elements of the affidavit:

- A description of the efforts made by the agency to reunify the family since the last disposition or review hearing and an explanation why those efforts were not successful;
- An explanation why the child cannot presently be protected from the identified problems in the home even if services are provided to the child and family.

The affidavit or an accompanying report should address each of the issues discussed in Section E, entitled *Key Decisions the Court Should Make at Review.* Courts should review the format of current court reports to make sure that they call for that information.

Court rules and forms for pre-review reports should be carefully designed to assist judges to submit complete written findings of fact and conclusions of law. If judges are required to cover particular issues in orders or findings, the report should address each such issue. Accordingly, the form used for agency pre-review reports should be worded as precisely as possible to address the exact issues that need to be addressed by the judge. This will assist the court in preparation of its findings.

G. The Court's Written Findings of Fact and Conclusions of Law at the Review Hearing

- Set forth findings as to why the children are in need of continued placement outside the parents' home or continued cost of supervision, including the specific risks to the child;
- Set forth findings as to whether and why family reunification and an end to court supervision continues to be the long-term case goal;
- Set forth findings as to whether the agency has made reasonable efforts to eliminate the need for placement, with specific findings as to what actions the agency is taking;
- Set forth detailed findings of fact and conclusions of law as to whether the parents are in compliance with the case plan and identify specifically what further actions the parents need to complete;
- Set forth orders for the agency to make additional efforts necessary to meet the needs of the family and move the case toward completion;
- Be written in easily understandable language which allows the parents and all parties to fully understand what action they must take;
- Approve proposed changes in the case plan and set forth any court-ordered modifications needed as a result of information presented at the review;
- Identify an expected date for final reunification or other permanent plan for the child; and
- Make any other orders necessary to resolve the problems that are preventing reunification or the completion of another permanent plan for the child.
- Set date and time of next hearing, if needed.

The issues to be addressed in the agency's predisposition report or petition should also be addressed in the court's written findings of fact and conclusions of law.

H. Conclusion

Judicial findings can strengthen the court's decision-making and create a more complete record. When there are detailed findings at adjudication, disposition, review hearings, and permanency planning hearings, it is far easier to move toward a permanent plan for each child. With a clear judicial record of repeated revisions in case plans, the agency's adherence to plans, and parental inaction, termination of parental rights proceedings become far less burdensome on the parties. When there were clear findings at the previous hearing, including instructions to the parties, there is far greater likelihood that there will be a consistent pattern of decisions in the case. Without a strong written record, there is a risk that the same issues and excuses for parental inactivity or agency indecision can be repeated.

The burden of preparing findings can be reduced by ensuring that the agency's report covers the same issues as those that are to be addressed in the court's findings. If the issues are the same and the report is well-prepared, the court can repeat, modify, or refer to portions of the report in its findings.

I. Resource Guideline

It is recommended that 30 minutes be allocated for each review hearing.

Hearing Activity	Time Estimate
1. Introductory Remarks • introduction of parties • advisement of rights • explanation of the proceeding	2 Minutes
2. Adequacy of Notice and Service of Process Issues	3 Minutes
3. Case Status/Review of Case Plan • adequacy and appropriateness of current placement • progress toward long-term goal • continued need for current placement • new or changed case circumstances • additional services needed to achieve long-term goal • modifications needed regarding visitation and child support	10 Minutes
4. Reasonable Efforts Finding	5 Minutes
5. Troubleshooting and Negotiations Between Parties • confusion regarding specifics of the case plan and what is expected of parents • visitation and child support issues • discuss need for additional orders to facilitate case progress	5 Minutes
6. Issuance of Orders and Scheduling of Next Hearing • preparation and distribution of orders to all parties prior to adjournment	5 Minutes
Time Allocation	30 Minutes

J. Review Hearing Checklist

Persons who should always be present at the review hearing:

- Judge or judicial officer
- Parents whose rights have not been terminated, including putative fathers
- Age-appropriate children
- Relatives with legal standing or other custodial adults
- Foster parents
- Assigned caseworker
- Agency attorney
- Attorney for parents (separate attorneys if conflict warrants)
- Legal advocate for the child and/or GAL/CASA
- Court reporter or suitable technology
- Security personnel

Persons whose presence may also be needed at the review hearing:

- Extended family members
- Adoptive parents
- Judicial case management staff
- Service providers
- Adult or juvenile probation or parole officer
- Other witnesses
- School officials

Key decisions the court should make at the review hearing:

- Whether there is a need for continued placement of a child.
- Whether the court-approved, long-term permanent plan for the child remains the best plan for the child.
- Whether the agency is making reasonable efforts to rehabilitate the family and eliminate the need for placement of a child.
- Whether services set forth in the case plan and the responsibilities of the parties need to be clarified or modified due to the availability of additional information or changed circumstances.
- Whether the child is in an appropriate placement which adequately meets all physical, emotional and educational needs.
- Whether the terms of visitation need to be modified.
- Whether terms of child support need to be set or adjusted.
- Whether any additional court orders need to be made to move the case toward successful completion.
- What time frame should be followed to achieve reunification or other permanent plan for each child.

Submission of reports to the court:

Pre-Review Report

Pre-review reports by the child welfare agency and the GAL/CASA can serve the same purpose as predisposition reports. Pre-review reports should include:

- A statement of family changes needed to correct the problems necessitating state intervention, with timetables for accomplishing them;
- A description of services to be provided to assist the family; and
- A description of actions to be taken by parents to correct the identified problems.

Affidavit of Reasonable Efforts

When the agency recommends continued foster placement, an affidavit of reasonable efforts should be submitted. The following are some key elements of the affidavit:

- A description of the efforts made by the agency to reunify the family since the last disposition or review hearing and an explanation why those efforts were not successful;
- An explanation why the child cannot presently be protected from the identified problems in the home even if services are provided to the child and family.

The court's written findings of fact and conclusions of law at the review hearing should:

- Set forth findings as to why the children are in need of continued placement outside the parents' home or continued court supervision, including the specific risks to the child;
- Set forth findings as to whether and why family reunification and an end to court supervision continues to be the long-term case goal;
- Set forth findings as to whether the agency has made reasonable efforts to eliminate the need for placement, with specific findings as to what actions the agency is taking;
- Set forth detailed findings of fact and conclusions of law as to whether the parents are in compliance with the case plan and identify specifically what further actions the parents need to complete;
- Set forth orders for the agency to make additional efforts necessary to meet the needs of the family and move the case toward completion;
- Be written in easily understandable language which allows the parents and all parties to fully understand what action they must take to have their children returned to their care;
- Approve proposed changes in the case plan and set forth any court-ordered modifications needed as a result of information presented at the review;
- Identify an expected date for final reunification or other permanent plan for the child;
- Make any other orders necessary to resolve the problems that are preventing reunification or the completion of another permanent plan for the child; and
- Set date and time of next hearing, if needed.

K. Endnotes

1. M. Rutter, Maternal Deprivation Reassessed, 179-197 (England: Harmondsworth, Penguin, 1981); J. Bowlby, Attachment and Loss (New York: Basic Books, 1973); J. Goldstein, A. Freud and A. Solnit, Beyond the Best Interest of the Child, 2d ed. (New York: Free Press, Macmillan 1979).

2. See 42 USC §§ 675(5)(B), 675(6).

3. See 42 USC § 675(5)(B).

4. See 42 USC § 675(5)(B).

VII. Permanency Planning Hearings

PERMANENCY PLANNING HEARINGS TABLE OF CONTENTS

A. Introduction

Permanency planning hearings are a special type of post-dispositional proceeding designed to reach a decision concerning the permanent placement of a child. Unlike review hearings, which involve routine oversight of case progress, permanency planning hearings represent a deadline within which the final direction of the case is to be determined.

Federal law distinguishes between review hearings and permanency planning hearings.[1] As previously noted, federal law requires six-month reviews to be conducted by either a court or an "administrative body." Federal law also requires permanency planning hearings within 18 months and "periodically thereafter" to determine the future status of each child in substitute placement.

While courts need not be involved in six-month reviews, federal law requires permanency planning hearings to be conducted by either a court or an administrative body appointed or approved by a court.[2] The permanency planning hearing is to determine the child's permanent placement and must provide procedural protections for the parents and child. As a practical matter, to ensure a timely permanent placement decision and effective procedural protections to parents and children, only courts should conduct permanency planning hearings.

Maintaining the distinction between review hearings and permanency planning hearings is a key to achieving permanency for foster children. An essential part of this distinction is the fundamental difference in the purposes of the two types of hearing. A review hearing is to fine tune, correct, adjust, and update the case plan; a permanency planning hearing is to decide upon a permanent placement for the child. A review hearing is to oversee case progress; a permanency planning hearing is to make a definitive long-term decision. In courts where these differences are not recognized, "permanency planning" hearings have often become no more than routine extensions of foster care. When permanency planning hearings are seen as routine review hearings, they fail to prevent prolonged foster care. Without effective permanency planning hearings, children are allowed to remain in care for years with a nominal goal of "return home."

Maintaining the distinction between review hearings and permanency planning hearings is a key to achieving permanency for foster children.

At the permanency planning hearing, the judge should decide whether a child is to be permanently returned home. In most cases, either the child should be temporarily returned home by the time of the permanency planning hearing or efforts to return the child home should cease. In some cases, however, where a family has made substantial progress prior to the permanency planning hearing the judge may authorize return home within a short time after the hearing. Otherwise, there should be no continuing goal of family reunification.

When the decision at the permanency planning hearing is not to send the child home, the court should systematically choose among permanent alternatives for the child. In particular, the court should carefully consider relatively secure permanent options before approving others. For example, the court should consider the possibility of adoption before accepting a lower priority option such as extended foster care or long-term custody.

The court record should reflect and reinforce the systematic nature of the judge's decision. To assist the court in making its decision and to assist other parties to prepare, the petition or report submitted by the child welfare agency should systematically discuss possible permanent options for the child. Likewise, in its written findings of fact and conclusions of law, the court should identify a new permanent placement goal for the child and specify concrete, time-limited steps to achieve the goal.

Stricter requirements should apply to permanency planning hearings as opposed to routine review hearings, but courts should make permanent decisions for children as soon as possible. In cases where the evidence is over-

whelming at the very beginning of the case that the family cannot be rehabilitated, the court must forego the goal of family reunification and move to approve an alternate permanent placement for the child.

In many cases, it is appropriate to schedule permanency planning hearings well before statutory deadlines. Statutory deadlines for permanency planning hearings should be seen as maximum rather than standard times. For example, in a case where both parents are persistently uncooperative in spite of diligent agency efforts to help them, and there has been no discernible progress within eight months of placement, an early permanency planning hearing is appropriate. In many cases, a permanency planning hearing is appropriate even sooner.

In cases where the evidence is overwhelming at the very beginning of the case that the family cannot be rehabilitated, the court must forego the goal of family reunification and move to approve an alternate permanent placement for the child.

In jurisdictions where review hearings are held frequently, the focus of review hearings should gradually become more like that of permanency planning hearings as the case proceeds. As the case advances, the judge should increasingly focus on specific tasks to be accomplished and deadlines for their completion. The judge should make it clear what progress is expected and the times within which such progress must occur. Each hearing should move the case forward as much as is possible. Finally, at some point no later than the deadline set by statute or court rule, the judge should schedule a permanency planning hearing. At the permanency planning hearing, the judge should make the decision whether or not the child is to go home and, if not, what legal permanent placement will be sought for the child.

In states where post-dispositional hearings are infrequent and begin long after a child is placed in foster care, the first post-dispositional hearing should be a permanency planning hearing rather than a review hearing. For example, if there is no post-dispositional judicial oversight until 12-18 months after placement, the function of routine review may have been left to the agency or some other entity such as a citizen foster care review board. It is too late for the court to correct and fine tune the agency's case plan for the purpose of achieving long-term reunification of the family. The family has already been separated for an extended period. The court should decide whether or not the child is to be returned home and, if not, what other permanent placement option will be secured.

When the child welfare agency does little to assist the family prior to the permanency planning hearing, permanency planning hearings should not be allowed to function as ordinary review hearings. Rather, the court should institute frequent review hearings and, when necessary, compel timely agency action to help the family while it is still practical.

While federal law contemplates permanency planning hearings where definite decisions are made concerning the future status of children, federal authorities have not yet interpreted or enforced the law to require such decisions. These guidelines call for permanency planning hearings that are not routine reviews. Courts need to hold permanency planning hearings not primarily because they are mandated by federal law, but because they are necessary to protect children from drifting in foster care.

B. Timing of the Permanency Planning Hearing

Timetables for permanency planning hearings are governed by both federal and state statutes. As indicated above, federal law specifies that the permanency planning hearing must occur within 18 months of placement and periodically thereafter.[3] Some state statutes require earlier permanency planning hearings and many courts often exceed statutory deadlines.

Permanency planning hearings

should take place, at the very minimum, at least annually. This assures that the crucial decision concerning whether a child should return home is not unduly delayed. Social science research on children in foster care has shown that family reunification becomes less likely the longer a child remains in foster care. Early studies show a particularly significant drop in the likelihood of reunification between the first and second years in foster care.[4] More recent research shows the critical time period may be even earlier.[5]

If the goal of family reunification is not to be abandoned by default, one year should be considered a maximum time for the first hearing designed to make a long-term placement decision. For younger children whose emotional relationships are likely to break down quickly after separation, a shorter time is essential.

C. Agreements by the Parties

If the parties wish to submit a comprehensive agreement in lieu of a permanency planning hearing, the court should not accept such an agreement unless it thoroughly questions the parties concerning the terms of the agreement. When the parties have reached agreement at a permanency planning hearing but the agreement is not complete, the hearing should be adjourned for a short time (e.g., for one day) and the parties should be given time to work out the issues and present them as proposed agreed findings.

D. Who Should Be Present

Persons who should always be present at the permanency planning hearing:

- Judge or judicial officer
- Age-appropriate children
- Parents whose rights have not been terminated, including putative fathers
- Relatives with legal standing or other custodial adults
- Assigned caseworker
- Agency attorney
- Attorney for parents (separate attorneys if conflict warrants)
- Legal advocate for the child and/or GAL/CASA
- Court reporter or suitable technology
- Security personnel

Persons whose presence may also be needed at the permanency planning hearing:

- Extended family members
- Foster parents
- Prospective adoptive parents
- Judicial case management staff
- Service providers
- Adult or juvenile probation or parole officer
- Other witnesses

With regard to service providers, relatives, custodial adults such as foster parents, and persons working at residential facilities, their presence is probably required only if they may play a role in the permanent plan for the child or their testimony is required on a contested matter.

E. Key Decisions the Court Should Make at the Permanency Planning Hearing

Court decisions at a permanency planning hearing need to be more specific, final, and definitive than at a review hearing. A permanency planning hearing should encompass a systematic examination of each child's options. If the decision is that a child is not to be returned home or placed for adoption,

the court should first have carefully considered and rejected these most permanent and high priority options. For each option selected, the court should determine how it is to be implemented. The following options are discussed in order of preference and priority.

The child is to be returned home on a specific date.

When a firm decision is made to reunite a family, the court should set a date certain for reunification and should approve a plan to ease the transition. This plan typically should include a schedule for phased-in increases in parental visiting. When a definite decision is made to return a child home, it is not enough to simply state that family reunification is the goal and to list some tasks and timetables. The original case plan should already have included these and been revised at periodic reviews.

The child will be legally freed for adoption.

If a child cannot be safely returned home at the permanency planning hearing, consideration should be given to termination of parental rights to legally free the child for adoption. The permanency planning hearing may elicit a decision on whether a termination of parental rights proceeding should be initiated, or, if a termination petition has been filed and the parties have received proper notice, whether the case may actually proceed to termination.

In deciding whether adoption may be the most appropriate placement, the court should consider the possibility of adoption by foster parents with whom the child already has emotional ties. Adoption by members of the child's extended family should also be considered.

Another key factor in determining whether a child should be adopted is the availability of adoption subsidy benefits that are sufficient to assist the adoptive parents and meet the child's special needs. Adoption subsidy sufficient to help pay for a child's care and treatment can make it possible for a child to leave foster care without risking extreme financial hardship on the adoptive parents. Many foster children are entitled to federal "adoption assistance" benefits after adoption.[6]

The custody of the child will be transferred to an individual or couple on a permanent basis.

The next permanency planning option is to transfer custody of the child to an individual or couple on a permanent basis. This might be done when a child cannot be safely returned home and instead must be permanently placed with a relative or other responsible adult. A court considering this option should also have determined why the child cannot return home, should not be adopted, and should set forth a transitional plan if the placement is not immediate.

In most states, transferring custody is a means of accomplishing two things without termination of parental rights: (a) ending the supervisory role of the agency and the juvenile court; and (b) granting permanent care and control of a child to a caretaker other than a parent. Under this arrangement, a parent may continue to have the obligation to provide child support, have the right to visit and communicate with the child, and to return to court to seek custody at some future time.

The child will remain in foster care on a permanent or long-term basis.

Long-term or permanent foster care can include placements with foster families, residential placements, and institutional placements. If the court decides that a child is to be in long-term or permanent foster care, the court should also determine why the child cannot be returned home or placed either for adoption or in permanent custody with an individual or couple. Long-term foster care is a relatively impermanent solution for children, both as a practical matter and in terms of the legal protections connected to the child's caretakers. Permanent or long-term foster care should be selected only when higher priority options are demonstrably impractical.

Although not desirable in most cases, long-term foster care may be the only expedient option in three common situations. Sometimes a child must remain with a foster parent on a permanent

basis because adoption is not appropriate. In this situation, the court should specify that this is to be a permanent arrangement. A court order can discourage subsequent revocation of this understanding by either the foster parents or the court.

A second type of situation is that the child cannot function in a family setting. In this case, the court should identify the reasons for long-term foster care outside a family (such as in a group home or institution). The court should also state the estimated length of the placement and, when possible, should approve a plan to help the child become able to function in a family setting.

A third situation necessitating long-term care is as part of a transitional living situation to prepare a young person for adulthood. The court should set forth why a transitional living situation is needed. The court should examine why long-term foster care is the most appropriate way of preparing the young person for adulthood and maintaining family ties after the young person has further matured.

Advanced age alone does not make a child "unadoptable." Judges making permanency planning decisions need to avoid consigning a child to permanent foster care simply because that child has reached a certain chronological age.

Foster care will be extended for a specific time, with a continued goal of family reunification.

This option is the least definite and should be permitted only as a last resort, when all other options are unworkable. Before approving extended foster care with a short-term goal of reunification, the court should make the following determinations: (a) the parent has made marked progress toward reunification; (b) the parent has maintained a close and positive relationship with the child; and (c) the child is likely to return home in the near future but it is premature to set an exact date for return. Courts should go through a thorough evaluation of the facts to avoid repeated decisions to leave children in care with a goal of reunification.

Some states do not allow indefinite extensions of foster care with a goal of reunification after the passage of a specified amount of time, while others impose procedural barriers to long-term foster care. Such statutes can be a helpful means to reinforce the purpose of permanency planning hearings. In other states, however, there are currently no serious statutory barriers to extending foster care for many years, yet still maintaining a goal of reunification. In such states, permanency planning hearings must be tightened through court rules and procedures.

F. Submission of Reports to the Court

A permanency planning hearing should be initiated through a petition and accompanied by a detailed statement of facts. The statement of facts may be set forth in the petition itself, in an accompanying affidavit, or in a report. The purpose of an agency report or petition for a permanency planning hearing is to help the judge reach a decision and to help the parties to prepare for the hearing. A report or petition for a permanency planning hearing should specify the relief being sought and address the same issues that the judge needs to determine. The report should also examine the reasons for excluding higher priority options and set forth a plan to carry out the placement decision.

When the report or petition requests that a child be returned home on a date certain, it should set forth:

- How the conditions or circumstances leading to the removal of the child have been corrected;
- The frequency of recent visitation and its impact on the child; and
- A plan for the child's safe return home and follow-up supervision after family reunification.

When the report requests termination of parental rights, it should set forth:

- Facts and circumstances supporting the grounds for termination; and
- A plan to place the child for adoption.

When a custody award to an individual or couple is proposed, the report should set forth:

- Facts and circumstances refuting the grounds for termination of parental rights (demonstrating the fitness of the parents) or showing that although the child cannot be placed with parents, termination is not in the best interests of the child;
- Facts and circumstances demonstrating the appropriateness of the individual or couple to serve as permanent caretaker of the child; and
- A plan to ensure the stability of the placement.

When permanent foster care with a specific family is proposed, the report should set forth:

- Facts and circumstances refuting the grounds for termination of parental rights (demonstrating the fitness of the parents) or showing that although the child cannot be placed with parents, termination is not in the best interests of the child;
- Facts and circumstances explaining why custody is not practical or appropriate;
- Facts and circumstances demonstrating the appropriateness of the foster parents and the foster parents' commitment to permanently caring for the child; and
- A plan to ensure the stability of the placement.

When long-term foster care is proposed because the child cannot function in a family setting, the report should set forth:

- Facts and circumstances leading to that conclusion; and
- A plan to prepare the child to live in a family setting at the earliest possible time and for visitation with parents and siblings.

When long-term foster care in connection with independent living arrangements is proposed, the report should set forth:

- Facts and circumstances refuting the grounds for termination of parental rights (demonstrating the fitness of the parents) or showing that although the child cannot be placed with parents, termination is not in the best interests of the child;
- Facts and circumstances explaining why continued custody or permanent foster care is not appropriate at the same time that independent living services are being provided; and
- A plan to prepare the child for independent living and for visitation between the child, parents and siblings.

When an extension of foster care for a time certain is proposed with a goal of reunification, the report should set forth:

- Facts and circumstances showing that the parents and child have a strong and positive relationship, parents have made substantial progress toward the child's return home, and return home is likely within the next six months;
- Facts and circumstances showing why it is too early to specify a time certain for reunification; and
- A plan to achieve reunification within six months.

G. The Court's Written Findings of Fact and Conclusions of Law at the Permanency Planning Hearing

As previously noted, the issues to be addressed in the agency's report to be submitted in advance of the permanency planning hearing should also be addressed in the court's written findings of fact and conclusions of law. Specific written findings after the permanency planning hearing are needed to both ensure prompt implementation of the court's decision and to provide documentation for further proceedings. As in other stages of the proceedings, the burden of preparing findings can be sharply reduced by requiring the

agency petition to examine the same issues as those to be addressed in the court's order and findings.

H. Conclusion

Subsequent review and permanency planning hearings are required when children are to remain either in foster care or under agency supervision for a substantial period of time. Regularly scheduled review hearings should continue until either the child is placed at home free of agency supervision, custody is awarded to an individual couple, the child is placed for adoption, or the child reaches his or her majority.

I. Resource Guideline

It is recommended that 60 minutes be allocated for each permanency planning hearing.

Hearing Activity	Time Estimate
1. Introductory Remarks • introduction of parties • advisement of rights • explanation of the proceeding	2 Minutes
2. Adequacy of Notice and Service of Process Issues	3 Minutes
3. Progress Toward Permanency • reunification • adoption/termination of parental rights • independent living/long term foster care • guardianship • temporary custody extension	15 Minutes
4. Reasonable Efforts Finding	10 Minutes
5. Permanency Plan Decision • permanency decision • time frames for achieving permanency • activities and services needed to achieve permanent plan	15 Minutes
6. Troubleshooting and Negotiations Between Parties • case transfer between social workers	10 Minutes
7. Issuance of Orders and Scheduling of Next Hearing • preparation and distribution of orders to all parties prior to adjournment	5 Minutes
Time Allocation	60 Minutes

J. Permanency Planning Hearing Checklist

Persons who should always be present at the permanency planning hearing:

- Judge or judicial officer
- Age-appropriate children
- Parents whose rights have not been terminated, including putative fathers
- Relatives with legal standing or other custodial adults
- Assigned caseworker
- Agency attorney
- Attorney for parents (separate attorneys if conflict warrants)
- Legal advocate for the child and/or GAL/CASA
- Court reporter or suitable technology
- Security personnel

Persons whose presence may also be needed at the permanency planning hearing:

- Extended family members
- Foster parents
- Prospective adoptive parents
- Judicial case management staff
- Service providers
- Adult or juvenile probation or parole officer
- Other witnesses

Key decisions the court should make at the permanency planning hearing:

- The child is to be returned home on a specific date.
- The child will be legally freed for adoption.
- The custody of the child will be transferred to an individual or couple on a permanent basis.
- The child will remain in foster care on a permanent or long-term basis.
- Foster care will be extended for a specific time, with a continued goal of family reunification.

Submission of reports to the court. A report for a permanency planning hearing should:

- Specify the relief being sought and address the same issues that the judge needs to determine.
- Examine the reasons for excluding higher priority options.
- Set forth a plan to carry out the placement decision.

When the report or petition requests that a child be returned home on a date certain, it should set forth:

- How the conditions or circumstances leading to the removal of the child have been corrected;
- The frequency of recent visitation and its impact on the child; and
- A plan for the child's safe return home and follow-up supervision after family reunification.

When the report or petition requests termination of parental rights, it should set forth:

- Facts and circumstances supporting the grounds for termination; and
- A plan to place the child for adoption.

When a custody award to an individual or couple is proposed, the report should set forth:

- Facts and circumstances refuting the grounds for termination of parental rights (demonstrating the fitness of the parents) or showing that although the child cannot be placed with parents, termination is not in the best interests of the child;
- Facts and circumstances demonstrating the appropriateness of the individual or couple to serve as permanent caretaker of the child; and
- A plan to ensure the stability of the placement.

When permanent foster care with a specific family is proposed, the report should set forth:

- Facts and circumstances refuting the grounds for termination of parental rights (demonstrating the fitness of the parents) or

showing that although the child cannot be placed with parents, termination is not in the best interests of the child;
- Facts and circumstances explaining why custody is not practical or appropriate;
- Facts and circumstances demonstrating the appropriateness of the foster parents and the foster parents' commitment to permanently caring for the child; and
- A plan to ensure the stability of the placement.

When long-term foster care is proposed because the child cannot function in a family setting, the report should set forth:

- Facts and circumstances leading to that conclusion; and
- A plan to prepare the child to live in a family setting at the earliest possible time and for visitation with parents and siblings.

When long-term foster care in connection with independent living arrangements is proposed, the report should set forth:

- Facts and circumstances refuting the grounds for termination of parental rights (demonstrating the fitness of the parents) or showing that although the child cannot be placed with parents, termination is not in the best interests of the child;
- Facts and circumstances explaining why continued custody or permanent foster care is not appropriate at the same time that independent living services are being provided; and
- A plan to prepare the child for independent living and for visitation between the child, parents and siblings.

When an extension of foster care for a time certain is proposed with a goal of reunification, the report should set forth:

- Facts and circumstances showing that the parents and child have a strong and positive relationship; parents have made substantial progress toward the child's return home, and return home is likely within the next six months;
- Facts and circumstances showing why it is too early to specify a time certain for reunification; and
- A plan to achieve reunification within six months.

The court's written findings of fact and conclusions of law at the permanency planning hearing should:

- Be prepared within a reasonable time after the permanency planning hearing;
- Be written in easily understandable language so that parents and all parties fully understand the court's order;
- Provide documentation for further proceedings;
- Address the same issues as those to be addressed in the report discussed above; and
- Set date and time of next hearing, if needed.

K. Endnotes

1. For the sake of clarity, the term "permanency planning hearing" is used here rather than the nomenclature "dispositional hearing," which appears in the federal Adoption Assistance and Child Welfare Act. 42 USC §675(5)(C). "Permanency planning hearing" more clearly expresses the characteristics of the federally mandated hearing than the term used in the federal law. As commonly used in state statutes, a "dispositional hearing" is a hearing that follows shortly after adjudication and determines the temporary custody and placement of a child. By contrast, the purpose of the hearing required by 42 USC §675(5)(C) is to determine the permanent legal status of the child. The hearing required by 42 USC §675(5)(C) ordinarily occurs long after the hearing generally referred to as the disposition hearing. Therefore, it is referred to as the permanency planning hearing.

2. See 42 USC §§ 675(5)(B), 675(5)(C), 675(6).

3. See 42 USC § 675(5)(C).

4. See, e.g., H. Maas and R. Engler, Children in Need of Parents (New York: Columbia University Press, 1959); Jenkins, Duration of Foster Care: Some Relevant Antecedent Variables, 46 Child Welfare 450, 451 (Washington, D.C.: Child Welfare League of America 1967); David Fanshell, The Exit of Children from Foster Care: An Interim Report, 50 Child Welfare 63, 67 (1971).

5. See reference materials compiled by Chapin Hall Center for Children, Nonlegal Benchbook (Chicago: University of Chicago 1993).

6. See 42 USC §§673.

VIII. Termination of Parental Rights Hearings

TERMINATION OF PARENTAL RIGHTS HEARINGS TABLE OF CONTENTS

A. Introduction

Termination of parental rights cases arising from child abuse and neglect are among the most difficult and challenging a judge can face. Termination proceedings must be conducted with great care and with full procedural protections to parents and children. The complaint or petition must provide fair notice of the grounds for termination. It must be served in a time and manner allowing for adequate preparation and legal representation.

Termination eliminates parental rights to visit, communicate, and obtain information about the child. After termination, parents no longer are entitled to notice of future court proceedings concerning the child and effectively are denied further opportunity to regain custody. As a general rule, termination of parental rights ends the duty to provide child support, at least prospectively.

...if the (termination) decision is mistaken, the child may needlessly be deprived of the chance to return home, to keep in contact with the parents, and to have lifelong relationships with members of the extended family.

While the phrase "termination of parental rights" is the most common usage, other terms are used in many states. Among the most common are "severance," "guardianship with the power to consent to adoption" (typically granted to the child welfare agency), and "permanent commitment" of the child.

Not only are parents' rights at stake in a termination proceeding, but whatever ruling the court makes can involve serious risks to the child as well. There are risks to the child in terminating parental rights because, if the decision is mistaken, the child may needlessly be deprived of the chance to return home, to keep in contact with the parents, and to have lifelong relationships with members of the extended family.

On the other hand, failure to terminate parental rights may deprive a child of the chance for a permanent substitute home. The preferred placement for most children who cannot return home is adoption. Many children, however, remain in foster care long after findings of the impossibility of family reunification. The longer children wait, the more difficult it becomes to find permanent homes, and the more likely that they will suffer serious emotional and psychological harm.

Delaying or deferring termination of parental rights decisions can create serious problems. Time frames and continuances that seem reasonable to adults and appropriate in other circumstances are unacceptable when a child's right to permanence is at stake. Delays often mean missed opportunities and consequences with devastating effects on the life of a child. When termination decisions are deferred or delayed, a child's emotional problems may worsen and the child may become more difficult to place.

Reasonable timetables must be imposed for termination of parental rights cases. Courts must be actively involved in managing the pace of the litigation, and take active steps to identify and eliminate unnecessary delay.

When parents cannot or will not be rehabilitated, the child urgently requires a timely decision and the provision of a permanent and secure new home. Timely decisions in termination of parental rights cases (assuming that they are also fair and correct) are ultimately more humane to parents and children than decisions that are repeatedly delayed.

Delaying or deferring termination of parental rights decisions can create serious problems.

The timeliness necessary in termination of parental rights cases at the trial level is also of great significance at the appellate level. The appellate court should give priority to appeals of abuse and neglect and termination of parental rights cases, and should establish and administer an accelerated schedule in each case to include the completion of the record, briefing, oral argument

and decision. Appellate courts should understand that speedy decisions are uniquely important to abused and neglected children who are without permanent, stable families.

Initiation of termination of parental rights proceedings is appropriate in some cases when a child is first placed into foster care. This should occur if, at the time of placement, there is strong evidence that a child will never be able to safely be placed with parents and that adoption is in the child's best interests.

Termination of parental rights proceedings represent the most serious of responses to child abuse or neglect. Termination of parental rights is not appropriate in cases in which intensive, in-home services or rehabilitative measures can be safely attempted and results assessed within a reasonable period of time, but termination of parental rights may be the only appropriate response in cases in which services cannot be safely provided or prove unsuccessful.

The outcome of a termination of parental rights case depends heavily on earlier stages of the court process. First, whether the parties were properly notified and advised of their rights at earlier stages of the case and findings of reasonable efforts to reunite the family, can affect the outcome of the case. Second, judicial notice may be taken of what occurred in earlier stages of the case. Third, prior court proceedings can provide important evidence such as in-court admissions by parents and instructions made to the parents by the judge. In some states, all evidence from prior stages of the process may be taken into account in the termination of parental rights decision.

Termination of parental rights should not be a rare occurrence in juvenile or family court even though it is rare in the population as a whole.

Termination of parental rights should not be a rare occurrence in juvenile or family court even though it is rare in the population as a whole. Whenever child abuse or neglect is serious enough to require the removal of a child from home, there is a possibility that the problems necessitating removal will not be curable within a reasonable period of time, and it will be necessary for the child to be adopted. There is an even greater possibility that a case will result in termination of parental rights when intensive, in-home services cannot safely be provided or are attempted but fail to prevent removal.

B. Petition and Notice

1. Petition

As with an abuse or neglect petition, a termination of parental rights petition must be complete and definite, and provide fair notice to the parties. However, termination of parental rights petitions are different from neglect and abuse petitions. A neglect or abuse petition may describe a few incidents of neglect or abuse within a short period of time. A termination petition often includes information spanning a much wider range of issues and longer period of time. Termination petitions typically address issues such as agency efforts to work with parents; parents' cooperation with the agency; parents' condition, behavior, progress, and improvements after adjudication; and the effects of foster placement on the child.

A termination of parental rights petition may allege facts in summary form because of the breadth of material at issue, but there must be sufficient detail to clarify petitioners' legal and factual theory of the case. Allegations must be sufficiently precise to give the parties notice of the issues at stake. The court should require that the petition cite the statutory grounds relied upon and provide a summary of facts in support of each statutory ground.

2. Notice and Summons

Summons and notice requirements for termination of parental rights proceedings are similar to those for adjudication, with one significant difference. Efforts required to identify or locate parents, and constructive notice in termination, should be stricter than for adjudication.

When only one parent receives actual notice prior to an adjudication, efforts to locate the other parent can continue after adjudication and the second parent may be able to enter the litigation when located. In contrast, the finality of termination proceedings makes subsequent notice and involvement of the parties impossible. Defects in notice can invalidate a termination of parental rights and disrupt a child's permanent placement. Consequently, there must be personal service on parties whenever possible, and, when it is not possible, there must be full compliance with the requirements of constructive service under state law.

When agencies do not conduct effective searches for missing parties, termination proceedings can be substantially and needlessly delayed. Courts should specify all steps to be taken to locate missing parents and should dictate times within which these steps are to be completed. This can be accomplished by monitoring individual cases, setting guidelines and rules, and training attorneys and agency staff.

Child welfare agencies can improve searches for missing parents by: developing improved standard search affidavits; developing a set of form letters asking for information about the location of missing persons; assigning skilled clerical personnel to assist with searches; obtaining the assistance of each state's Parent Locator Service or local child support enforcement office; and arranging with departments of motor vehicles and other government entities for on-the-spot computer checks and immediate replies to telephone requests from child welfare agencies. Judges can encourage such improvements and inter-agency cooperation.

It is particularly important to streamline notice by publication. Some state statutes or court rules shorten the time period for publication by requiring notice to be published only on one occasion and shortening the response time.

Judges can help reduce or eliminate notice-related delays by making sure that all parties are notified early in the court process. When judges insist on serious efforts to locate and notify parties whenever they are not present at earlier stages of litigation, there are far fewer situations in which it is necessary to conduct an extensive search after the filing of a termination of parental rights petition.

C. Voluntary Relinquishment of Parental Rights

The seriousness of termination of parental rights and the importance of avoiding collateral attacks on the decree, make it important to ensure that any consent to termination is voluntary and informed. If the court already has jurisdiction, it is advisable to take the voluntary relinquishment in court. Judges should take the time to make sure that parents understand the consequences of termination, their right to a trial, and to counsel, and the availability of less drastic legal alternatives.

Judges should take the time to make sure that parents understand the consequences of termination, their right to a trial, and to counsel, and the availability of less drastic legal alternatives.

Voluntary relinquishment of parental rights is a very difficult step. It may be awkward for parents to admit their inability to care for their own children and discouraging to lose contact with their children. If state law permits written relinquishments without parents' presence in court, the judge should thoroughly question agency witnesses regarding whether the consent was voluntary and knowledgeable. The judge should determine whether there has been compliance with all state requirements regarding written, voluntary relinquishment of parental rights. The judge should also inquire whether parents were thoroughly advised of and understood the consequences of termination of parental rights, the possible less drastic alternatives, and their right to trial and representation by counsel.

If a parent has not signed a relinquishment of parental rights and has failed to appear at the termination proceeding, the judge must determine whether the parent has been afforded proper

notice. If the parent received the petition, the judge should inquire whether the parent was informed of the right to court-appointed counsel.

D. Pretrial Proceedings

1. Case Flow Management

Serious delays in termination of parental rights proceedings are endemic in courts throughout the nation, and abused and neglected children are harmed by this systemic delay. One of the greatest causes of delay is the transfer of termination of parental rights cases among courts and judges. Delay can best be avoided if: a) the same court with jurisdiction over abuse and neglect matters retains jurisdiction over the same cases which proceed to termination of parental rights; and b) the same judge hearing earlier stages of the proceeding hears the termination case.

Efficient management by judges and administrators, combined with adequate judicial resources, can eliminate many sources of delay in termination of parental rights cases. Termination of parental rights cases must be given high priority because of the high stakes for children and parents and the particular stresses involved in termination proceedings.

Continuances in termination cases drive up court operation costs and counsel fees. Because delays in termination of parental rights extend children's time in foster care, they extend foster care payments and agency administrative costs. Reductions in court delays can greatly reduce expenditures throughout the executive branch of government.

Continuances in termination cases drive up court operation costs and counsel fees.

Many delays in termination proceedings are related to procedural failures early in the court process, such as failure to notify missing parents in the early stages of proceedings and failure to determine paternity. Noncustodial parents and putative fathers can delay a termination proceeding by requesting custody of the child. When this occurs, the case may need to "start over," while the agency tries to assist the noncustodial parent to gain custody of the child.

When a noncustodial parent receives notice early, it is possible to make decisions concerning the status of both parents at the same time. For this reason, if prosecutors or agency attorneys cannot be relied upon to provide timely notice to noncustodial parents and to arrange early determinations of paternity, the judge and court staff must insist that they occur.

Front-end delays in the court process also can delay initiation of termination proceedings. When adjudication and disposition are delayed, it often takes longer for termination to be initiated. In many states, grounds for termination of parental rights require a specific elapse of time after the adjudication or disposition hearing (e.g., failure to improve within one year after the court has made a finding of abuse or neglect) before a termination of parental rights petition may be filed.

Until there has been an adjudication, a parent may deny having abused or neglected a child and may therefore decline to cooperate with the agency. When adjudication is contested, agency efforts to aid the family are postponed. A central area of proof in many termination of parental rights cases is the sufficiency of agency efforts to help the family. Until there has been a disposition hearing, the terms of the case plan may be in dispute, blocking agency work with the family.

Overcrowded juvenile court calendars are another major source of delays in termination of parental rights cases. Contested termination cases take longer than other hearings and it may be difficult to allocate sufficient time to allow them to occur without interruption. A relatively high proportion of termination cases are contested compared to other types of hearings.

Contested termination trials too often are scheduled without sufficient time to allow them to be completed without interruption. As a result, cases are often continued on the day of trial and trials occur on "non-consecutive court days."

For example, a single trial may begin with a half-day hearing, be continued for six weeks, take another day, and then be continued for another six weeks. In some courts, termination trials are often spread out over months.

Non-consecutive court days occur when some courts "double book," or set more cases for trial than it is possible to try on one day because the court believes many parties will settle. The need for this practice can be avoided by more effective pre-trial proceedings.

Court staff also may be in the habit of scheduling termination of parental rights cases before there is a large enough block of time on the calendar. Because most juvenile court hearings are short, only very small blocks of time are usually allocated, rendering completion of termination cases impossible. When not enough judges are available, court staff prefer to begin the trial rather than setting the trial ahead many months in the future, when the first large block of time is available.

Steps must be taken to eliminate non-consecutive court days. First, there must be enough judges assigned to abuse and neglect cases to allow time to complete trials. Second, courts must insist that trials begin on schedule. Third, there must be no "double booking" of cases. Fourth, substantial blocks of time must be left open for contested hearings. Fifth, attorneys must hold early settlement discussions and inform the court in advance of matters which remain contested and how long a hearing should take.

Advance calendar call can inform the court whether a trial must be delayed and help the court estimate the trial length. Calendar call can be conducted either in court or via telephone. Calendar call might occur, for example, two weeks before the trial and then one day before trial. If a trial must be taken off the schedule, the time usually can be reallocated to emergency matters.

One helpful means of reducing delays is to set standard timetables for each stage of termination of parental rights cases. Pretrial hearings might be expected to take place within 30 days after the filing of the termination petition. In most cases, service of process and discovery should be completed by that time. The pretrial hearing can then serve as a full pretrial conference and the date of the trial can be set. Assuming that service of process and discovery are complete by the time of the 30-day hearing, the trial should be set within another 30 days.

If unacceptable delays persist, courts need to hold meetings from time to time to identify and discuss specific causes of delay.

If service of process or discovery have not been completed by the 30-day pretrial hearing (e.g., because constructive service is required), the judge should set a reasonable timetable for the completion of service and discovery and set a second pretrial hearing for a later date. At the second pretrial hearing, the termination trial can be set within 30 days thereafter.

It is important for the court to monitor compliance with the timetables. Courts should keep statistics on the extent to which individual judges are successful in adhering to the timetables. If unacceptable delays persist, courts need to hold meetings from time to time to identify and discuss specific causes of delay.

Many courts face repeated requests for continuances or exception to time requirements in termination cases. In termination (as in all stages of abuse and neglect cases), courts must establish strict criteria for granting continuances and procedures for discouraging them.[1]

2. Appointment of Counsel

Timely appointment of counsel for indigent parents can avoid serious delay in termination of parental rights cases. Appointments should occur immediately after a termination of parental rights petition is filed, and attorneys should be required to contact their clients in a timely fashion. Judges considering a parents' attorney's request for a continuance or cancellation of a court date should carefully consider the impact of the proposed delay on the child's well-being.

One way to avoid delays is to continue the involvement of the same attorney who represented the parent earlier.

Parents' attorneys who have stayed in contact with their clients, and who have periodically monitored their clients' progress, know more about the case and can provide better representation at a termination hearing.

Delays can also be avoided when there are special circumstances requiring the appointment of a new attorney for a termination of parental rights case. First, when an attorney is appointed, the court can inform the attorney when the initial hearing (such as the pretrial hearing) is to take place. If the attorney is not available, someone else can be appointed.

Second, attorneys can be appointed when a case is filed and instructed to make immediate efforts to contact their clients. Early appointments usually work out because most parents either are indigent and qualify for court-appointed counsel or agree to retain the attorney initially appointed to represent them.

Third, parents can be summoned to a hearing to take place within a few days after they receive notice of the case. Counsel can be appointed at this hearing. Counsel should be present before the hearing to discuss the case with the parents.

Fourth, parents can be given the name of their attorney the first time they receive notice of the termination proceedings and the first time they contact the court. If the attorney has not yet been identified, a court employee can arrange for the appointment of parents' counsel.

Parents who are respondents in termination of parental rights cases may be poor, uneducated, emotionally disturbed, drug or other substance-abusing, incarcerated, or homeless. Special efforts are required to ensure that they are put into contact with their attorneys at the earliest possible stage of court proceedings.

3. Discovery

Discovery is not usually a significant source of delay in termination cases in many courts. For example, when the same attorneys have represented the parties at earlier stages of the proceedings, little new discovery should be needed.

If serious discovery delays are frequent in termination cases, courts can speed discovery by establishing special rules and guidelines. Courts can routinely require child welfare agencies to make their files available shortly after termination petitions are filed. Most discovery in termination of parental rights cases focuses on the child welfare agency case file, which contains most documents needed by defense counsel. Courts can also speed discovery by shortening the time period within which the parties must respond to discovery requests.

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Attorneys should be expected to quickly bring any discovery disputes to the attention of the court. An early pretrial hearing is often a good point at which to consider discovery disputes. Similarly, parties who need to take depositions to prepare for termination cases should do so under tight but reasonable deadlines. Unless there are special reasons for delay, the court might require the parties to complete depositions prior to the pretrial hearing.

4. Pretrial Conferences and Meetings

Pretrial conferences and meetings can be used to check delays in the appointment of counsel, ensure early notice to parties, and expedite discovery. They can also resolve evidentiary issues prior to trial.

Pretrial conferences might be convened on an ad hoc basis or might be required for every case depending upon the needs of the particular court. One approach might be to require a pretrial conference whenever a trial is delayed beyond a specified number of days. Where contested termination trials routinely begin more than 60 days after the filing of the petition, pretrial conferences may be necessary to identify and correct delays.

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Court reports in termination cases help the judge and the parties determine

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5. Submission of Reports to the Court

Court reports in termination cases help the judge and the parties determine

what is the best plan for the child after the decision has already been made that the child needs a permanent new home. These might include reports from: the child welfare agency; legal advocate for the child; GAL/CASA; or parties to the case. Court reports may address why termination of parental rights is preferable, for example, to transferring custody to a foster parent or relative. Court reports may also offer recommendations concerning how a permanent plan for the child is to be achieved, including who should be responsible for placing the child for adoption.

In some states, the judge decides whether the grounds for termination have been proved (e.g., parent abandoned child or failed to improve in spite of agency efforts) and at the same time decides whether termination is in the best interests of the child. In states where the rules of evidence apply, these reports may be inadmissible because they typically include hearsay and other inadmissible evidence.

In other states, the judge's ruling concerning grounds for termination is separate from the determination of whether termination is in the best interests of the child. In these states, agency reports may be both legally admissible and helpful. Assuming that the rules of evidence do not apply to the best interests determination, the report can serve a function comparable to that of a predisposition or pre-review report. The report can help the judge to consider termination along with other alternatives for the child and can propose a case plan designed to meet the needs of the child after termination. Such a report should not, of course, be presented to the judge until after the decision that grounds for termination apply.

Pre-termination reports should be sent to the parties well in advance of the judge's receipt of the report. If decisions on termination grounds and best interests are made in quick succession, the report should be submitted to the parties well in advance of the trial. This gives the parties the opportunity to prepare a response to the report and to suggest alternatives. On the other hand, if there are two hearings that occur on separate days, the report might be submitted to the parties after the judge determines that the grounds have been met.

E. Timing of the Termination Hearing

Courts should announce and enforce timetables for the commencement and completion of termination of parental rights hearings. In most cases, 60 days is adequate to prepare for a termination of parental rights hearing. Therefore, termination trials should be set within 60 days after completion of service of process. Delays are unavoidable in certain circumstances, such as when depositions must be taken in other states or parties or attorneys are ill at the time of trial. The reasons for any exceptions should appear in the court record.[2]

F. Who Should Be Present

Persons who should always be present at the termination of parental rights hearing:

- Judge or judicial officer
- Parents, including putative fathers
- Assigned caseworker
- Agency attorney
- Attorney for parents (separate attorneys if conflict warrants)
- Legal advocate for the child and/or GAL/CASA
- Court reporter or suitable technology
- Security personnel

The following are persons whose presence may also be needed at the termination of parental rights hearing:

- Age-appropriate children whose testimony is required
- Judicial case management staff
- Law enforcement officers
- Service providers
- Adult or juvenile probation or parole officer
- Other witnesses

G. Key Decisions the Court Should Make at the Termination of Parental Rights Hearing

• Whether the statutory grounds for termination of parental rights have been satisfied.

In deciding whether a child can safely be returned home, the judge applies specific statutory grounds dealing with the behavior and condition of the parent. Typical grounds include extreme parental disinterest in the child (e.g., desertion or abandonment), parental failure to improve in spite of reasonable efforts by the agency to help, parental inability to care for the child (e.g., mental or emotional incapacity and uncontrollable substance dependency), prolonged imprisonment of the parent, extreme or repeated abuse of the child, and (in a few states) return of an abused or neglected child would be harmful because of the special circumstances or condition of the child.

• Whether termination is in the best interests of the child.

In deciding whether termination is in the best interests of the child, courts typically consider what alternatives to termination are available and whether they can provide a better permanent home for the child. It is evident in child development research and appellate court decisions that an adoptive family does not have to be identified in order for a child to be 'adoptable.' Judges who have terminated parental rights must take personal responsibility for post-termination placement planning and judicial monitoring of case files within the agency. Possible alternatives to termination of parental rights include adoption with parental visits (available in some states), custody of the child by an adult or couple, court-ordered long-term foster care, or continued foster care. There are critical differences between these options. In choosing among them, the judge must consider available financial assistance, continuing involvement of the child welfare agency, continuation of juvenile court oversight, and the legal security of the new permanent caretaker.[3]

If termination of parental rights is granted, the court must decide to whom to award custody of the child. In some states this would be the child welfare agency, since this agency either arranges adoptions or contracts with private adoption agencies. In other states, the judge may have a choice among public and private agencies with which a child might be placed for adoption.

H. The Court's Written Findings of Fact and Conclusions of Law

The court should prepare findings whether or not termination of parental rights is granted. These findings should address whether the grounds for termination were satisfied and, if so, whether termination was in the best interests of the child. Because a large proportion of contested termination cases are appealed, findings must be sufficient for the purpose of appellate review.

Delays in preparing findings are still another common source of delay in termination of parental rights cases. The preparation of findings can be accelerated when judges orally summarize evidence at the close of the hearing, have a transcript prepared, and then edit and supplement the transcript.

Preparation of well-written findings at adjudication, disposition, review, and permanency planning hearings also can help to accelerate preparation of findings at termination. Written instructions by the court to the family at early stages of the case, for example, can help the judge evaluate allegations of parental failure to improve following earlier neglect or abuse.

I. Post-Termination Placement Plan and Judicial Monitoring

1. Post-Termination Placement Plan

A post-termination placement plan should promptly be prepared and submitted to the court following termination of parental rights. The court should expect placement plans which set forth a strategy and timetable for the child's early permanent placement. Submission of such plans is needed because, without judicial oversight, children can remain for years in foster care after being legally freed for adoption. Because

the case may be transferred to a different branch of the agency, it is important that the judge who hears the termination of parental rights petition continues to be responsible for the case through the adoption.

A placement plan should include the following: steps the agency will take to locate and evaluate adoptive parents; adoption exchanges where the agency will list the child; and proposed adoption subsidies. The agency should be expected to use all appropriate resources to assure the adoption, not unreasonably excluding any categories of people as adoptive parents based upon age, marital status, or race.

Depending on state law, there are three possible stages at which a post-termination placement plan might be considered by the court. First, the plan might be considered at the same hearing in which the court determines whether the grounds for the termination of parental rights have been met. In this case, there needs to be at least a pause in the hearing to permit the judge to review the plan. The parties should have received the plan well in advance of the hearing.

Second, the plan might be considered at the separate hearing where, subsequent to determining that the grounds were proved, the court considers whether termination is in the best interests of the child and, if so, who should have custody. In this case, the plan must be submitted to the parties well in advance of the disposition hearing and could be submitted to the judge any time after the decision to terminate parental rights.

Third, the placement plan might be submitted and considered after a final order terminating parental rights. In either case, the plan should be submitted to the parties well in advance of the hearing in which the plan is to be considered.

2. Judicial Monitoring

There should be periodic review to assure that reasonable efforts continue to be made to place the child following the termination of parental rights. Many of the previously discussed guidelines in Chapter VI Review Hearings also apply to case review after termination of parental rights. But there are some important differences. Most obviously, the parents are no longer parties after termination of parental rights. This makes it particularly important that the child have effective, independent representation.

A special set of issues applies in post-termination review. The purpose of the review is to make sure that all possible is being done to place the child for adoption, to initiate the adoption process, and to make sure the needs of the child are meanwhile being met.

Judges must be familiar with basic aspects of the adoption process to effectively perform their review function at this stage. They must have a basic understanding of the steps agencies follow in recruiting adoptive parents, including the use of adoption registries. Judges should know something about the special difficulties in placing different categories of children. They should be familiar with agency policy on who is eligible to adopt. They must be familiar with agency policies concerning adoption by relatives and foster parents.

When children have special needs, a major concern at post-termination reviews should be whether an appropriate adoption subsidy is available to prospective adoptive parents. The lack of an adoption subsidy can be a barrier to placement and can lead to later adoption disruption. For example, the placement of children with expensive medical conditions, handicapped children, children in sibling groups, older children, and minority children may be very difficult without proper financial support for adoptive parents.

Inadequate subsidies can make children hard to place or lead to later adoption disruption. For example, an inadequate subsidy may cause real hardship when a parent must give up work to care for a handicapped child. Failure to pay for critical services may impel the parents to attempt to relinquish the child. Not only may unexpected costs financially destroy adoptive parents, but adoptive parents may feel compelled to place the child into foster care in order to obtain needed services. Examples of services that may need to be subsidized

are psychiatric care (even if such care is not currently required), special services and medical care for the handicapped (Medicaid may not be enough), and post-adoption counseling for adoptive parents of difficult children.

Accordingly, judges should have access to and be aware of basic eligibility criteria and available benefits. They should also be aware that for eligible children subsidy is an entitlement under federal law and the law of most states.

J. Conclusion

Timely, careful and complete termination of parental rights hearings can avoid mistakes with potentially tragic consequences to children and families; spare children and families from extended periods of uncertainty; shorten the time children spend in foster care; and facilitate permanency planning for children, potentially speeding progress toward adoption or other permanent placement.

Enough time must be set aside for the completion of careful and complete contested termination hearings. Each court must determine the typical range in length of contested hearings and establish a calendar to accommodate such hearings without the need for routine postponements and delays. Courts must require that all necessary participants be present and on time. In determining the number of judges and in organizing the court calendar, the court must calculate both the frequency of contested hearings and their average length.

K. Resource Guideline

It is recommended that a minimum of 60 minutes be allocated for each termination of parental rights hearing.

Hearing Activity	Time Estimate
1. Introductory Remarks • introduction of parties • advisement of rights • explanation of the proceeding	2 Minutes
2. Adequacy of Notice and Service of Process Issues	3 Minutes
3. Case Status/Activity Update • services provided to the family • continuing barriers to case plan progress • grounds for termination of parental rights	10 Minutes
4. Discussion of Why Termination of Parental Rights is in the Best Interests of the Child • what alternatives to termination are available • adequacy of the post-termination placement plan	15 Minutes
5. Reasonable Efforts Finding	10 Minutes
6. Troubleshooting and Negotiations Between Parties • detailed explanations of the significance of the hearing to the parents • time for the judge to ensure that surrender decisions are those of the parents (if applicable) • final visit arrangements • respect for emotional outbursts in surrender situations	10 Minutes
7. Issuance of Orders and Scheduling of Next Hearing • issue finding regarding termination including whether grounds for termination were satisfied and, if so, whether termination was in the best interests of the child • oral summary of evidence if entry is not completed and provided to all parties at the hearing	10 Minutes
Minimum Time Allocation	60 Minutes

L. Termination of Parental Rights Hearing Checklist

Persons who should always be present at the termination of parental rights hearing:

- Judge or judicial officer
- Parents, including putative fathers
- Assigned caseworker
- Agency attorney
- Attorney for parents (separate attorneys if conflict warrants)
- Legal advocate for the child and/or GAL/CASA
- Court reporter or suitable technology
- Security personnel

The following are persons whose presence may also be needed at the termination of parental rights hearing:

- Age-appropriate children whose testimony is required
- Judicial case management staff
- Law enforcement officers
- Service providers
- Adult or juvenile probation or parole officer
- Other witnesses

Key decisions the court should make at the termination of parental rights hearing:

- Whether the statutory grounds for termination of parental rights have been satisfied.
- Whether termination is in the best interests of the child.

The court's written findings of fact and conclusions of law at the termination of parental rights hearing should:

- Indicate whether or not termination of parental rights is granted.
- Address whether the grounds for termination were satisfied and, if so, whether termination was in the best interests of the child.
- Be sufficient for the purpose of appellate review.
- Set schedule for subsequent judicial review.

M. Endnotes

1. See Case Flow Management guidelines in Chapter II GENERAL ISSUES, Section C.

2. See Case Flow Management guidelines in Chapter II GENERAL ISSUES, Section C.

3. See Mark Hardin, "Legal Placement Options to Achieve Permanence for Children in Foster Care," Foster Children in the Courts, 128 (Boston: Butterworth Legal Publishers, 1983).


100

IX. Adoption Hearings

ADOPTION HEARINGS TABLE OF CONTENTS

A. Introduction

Adoption creates the status of parent and child between individuals who are not each other's biological parent or child. A judicial decree of adoption builds a new legal relationship between a child and the members of the child's adoptive family, and causes the child to become, for all purposes, the child of the adoptive parents. In child abuse and neglect cases, adoption is recognized by federal and state laws as the most permanent form of out-of-home placement, and is the preferred result for children who cannot be returned home.

It is the preferred practice for the same court which handled termination of parental rights cases to also handle adoption proceedings in the same case.

Adoption makes possible the placement of children without safe or permanent living situations with adoptive parents who are willing to assume all parental rights and responsibilities. Longitudinal research has confirmed the value of adoption, and proven that the occurrence of sometimes problematic adoptive relationships are outweighed by the generally positive, long-term consequences of adoption.

The court has authority to proceed with adoption when parental rights have been terminated. It is the preferred practice for the same court which handled termination of parental rights cases to also handle adoption proceedings in the same case.

B. Adoption Hearings

The judge's key functions when hearing an adoption petition for a child in foster care are to: (a) ascertain that either parental rights have been voluntarily relinquished or that parental rights have been terminated and the appeal process is over; (b) make sure that all other required consents to adoption are provided; (c) review home studies or court-ordered reports; (d) make sure adoptive parents understand that adoption is permanent and irreversible; (e) confirm in cases involving children with special needs, that adoptive parents have been fully advised of all the necessary services and special circumstances of the child, revisit the adequacy of adoption subsidy and otherwise make sure that needed services and assistance will be available after the adoption; and (f) resolve conflicts. The same court which terminated parental rights should handle adoption proceedings in order to most effectively perform these functions.

Contested adoption hearings may be required when persons other than the petitioner, such as relatives or past caretakers of the child, intervene and seek to adopt the child. In many states, rules of intervention are liberal in adoption proceedings. Contested hearings may also occur if the agency with custody of the child believes that the placement was in error and opposes the adoption.

When an adoption is contested, it is critical that issues be resolved in a timely fashion. The impact of delays in contested adoption proceedings may be compared to delays in termination of parental rights.

When an adoption petition is to be approved, a significant part of the judge's function becomes ceremonial. The adoption is an important milestone for parent and child, and the courtroom ceremony can be an important event in their lives.

C. Who Should Be Present

Persons Who Should Always Be Present at the Uncontested Adoption Hearing:

- Judge or judicial officer
- Adoptive parents
- Assigned caseworker
- Legal advocate for the child and/or GAL/CASA
- Court reporter or suitable technology
- The child

At a final adoption hearing, the ceremonial aspects of the adoption ceremony are important to the child as well as the parents. Even where an infant is being adopted, the infant should be present. The child's presence may also

be required in jurisdictions where children of a certain age are statutorily required to consent in the presence of the judge. The judge should make sure the adopting parents understand the legal ramifications of the adoption and that all legal documents are in place to grant the adoption.

Persons Who Should Always Be Present At the Contested Adoption Hearing:

- Judge or judicial officer
- Prospective adoptive parents
- Assigned caseworker
- Agency attorney
- Legal advocate for the child and/or GAL/CASA
- Parties contesting the adoption
- Attorneys for all parties
- Court reporter or suitable technology
- Security personnel

Persons Whose Presence May Also Be Needed At the Contested Adoption Hearing:

- The child
- Judicial case management staff
- Other witnesses

The child

The child may need to be present for several reasons. Depending upon the child's age, his or her consent may be required by law, there may be a question about consent, or state law may require the child to consent in the presence of the judge. In contested proceedings, children may be called upon to testify.

Judicial case management staff

Members of the judicial staff may be required to complete administrative tasks regarding the adoption hearing process.

Other witnesses

Witnesses may be called upon to testify about the qualifications of the contending parties in a contested adoption. Other frequent witnesses may include agency personnel who can explain adoption subsidy or post-adoption services.

The Court's Written Findings of Fact and Conclusions of Law at the Adoption Hearing

At uncontested adoption hearings, the court should determine whether all of the necessary consents to adoption have been provided. This includes the consent of the agency with custody of the child, the consent of the child (if the child is old enough that consent is required under state law), and, in some cases, the consent of parents whose rights have not been terminated.

In some states, when there has been no prior termination of parental rights, parental consent to adoption must occur in the presence of the judge. In other states, a signed voluntary relinquishment of parental rights is sufficient. If written voluntary relinquishments are permitted, the judge should conduct a thorough inquiry concerning the conditions and circumstances under which the consent was taken.

The purpose of this inquiry is to determine whether the consent was voluntary and informed and that all alternatives to adoption were explained. By making sure that any consents are valid, the judge reduces the likelihood of a later collateral attack of the adoption decree.

The court should be satisfied that the child is doing well in the adoptive home and that the adoptive parents have made a clear and knowledgeable commitment to care for the child on a permanent basis. If a home study is required, the court should review it carefully and, if necessary, question its author.

The court should determine that the adoptive parents fully understand the legal and financial consequences of adoption. The judge should review with the parents and agency the need for and sufficiency of any adoption subsidy arrangements.

At contested adoption hearings, the court presides over a trial to determine whether the adoption should be granted. A contested adoption hearing must be conducted with procedural fairness, including notice to the parties and

the opportunity to be represented by counsel.

As with adjudication and the termination of parental rights hearings, the court must make special efforts to ensure that the matter is concluded without undue delay. Principles of case flow management must be applied to the contested adoption. Typical sources of delay include untimely completion of home studies, requests for delays by counsel, and overcrowded court dockets.

D. Conclusion

At final adoption hearings, where the court is to issue the decree, the judge should take special care to make the adoption both a solemn ceremony and a celebration. Adoption is an event of great importance in the lives of adoptive parents and children, and ceremony can help to seal the mutual commitment between parent and child. The judge should explain, in a dignified manner, the significance of the adoption. The judge should then elicit mutual promises of commitment from parents and age-appropriate children. At the conclusion of the brief ceremony, some courts arrange for the taking of photographs to commemorate the occasion.

In contested adoption cases, enough time must be set aside for the completion of careful and complete hearings. Each court must determine the typical range in length of contested hearings and establish a calendar to accommodate such hearings without the need for routine postponements and delays. Courts must require that all necessary participants be present and on time. In determining the number of judges and in organizing the court calendar, the court must calculate both the frequency of contested hearings and their average length.

E. Resource Guideline

It is recommended that a minimum of 30 minutes be allocated for each adoption hearing.

F. Adoption Hearing Checklist

Persons who should always be present at the uncontested adoption hearing:

- Judge or judicial officer
- Adoptive parents
- Assigned caseworker
- Legal advocate for the child and/or GAL/CASA
- Court reporter or suitable technology
- The child

Persons who should always be present at the contested adoption hearing:

- Judge or judicial officer
- Prospective adoptive parents
- Assigned caseworker
- Agency attorney
- Legal advocate for the child and/or GAL/CASA
- Parties contesting the adoption
- Attorneys for all parties
- Court reporter or suitable technology
- Security personnel

Persons whose presence may also be needed at the contested adoption hearing:

- The child
- Judicial case management staff
- Other witnesses

The court's written findings of fact and conclusions of law at the adoption hearing should:

- Determine whether all of the necessary consents to adoption have been provided, including the consent of the agency with custody of the child, the consent of the child (if the child is old enough that consent is required under state law), and, in some cases, the consent of parents whose rights have not been terminated.
- Thoroughly describe the conditions and circumstances under which parental consent to adoption was obtained. When there has been no prior termination of parental rights in some states, parental consent must occur in the presence of the judge. Other states require a signed voluntary relinquishment of parental rights.
- Determine whether the consent was voluntary and informed and that all alternatives to adoption were explained.
- Determine that the child is doing well in the adoptive home and that the adoptive parents have made a clear and knowledgeable commitment to care for the child on a permanent basis.
- Determine that the adoptive parents fully understand the legal and financial consequences of adoption. Review with the parents and agency the need for and sufficiency of any adoption subsidy arrangements.
- At contested adoption hearings, determine whether the adoption should be granted. A contested adoption hearing must be conducted with procedural fairness, including notice to the parties and the opportunity to be represented by counsel.
- Conclude the proceeding without undue delay, applying principles of case flow management.

Preliminary Protective Hearing Checklist

Persons who should always be present at the preliminary protective hearing:

- Judge or judicial officer
- Parents whose rights have not been terminated, including putative fathers
- Relatives with legal standing or other custodial adults
- Assigned caseworker
- Agency attorney
- Attorney for parents (separate attorneys if conflict warrants)
- Legal advocate for the child and/or GAL/CASA
- Court reporter or suitable technology
- Security personnel

Persons whose presence may also be needed at the preliminary protective hearing:

- Age-appropriate children
- Extended family members
- Adoptive parents
- Judicial case management staff
- Law enforcement officers
- Service providers
- Adult or juvenile probation or parole officer
- Other witnesses

Courts can make sure that parties and key witnesses are present by:

- Requiring quick and diligent notification efforts by the agency;
- Requiring both oral and written notification in language understandable to each party and witness;
- Requiring notice to include reason for removal, purpose of hearing, availability of legal assistance;
- Requiring caseworkers to encourage attendance of parents and other parties.

Filing the petition:

- A sworn petition or complaint should be filed at or prior to the time of the preliminary protective hearing.
- The petition should be complete and accurate.

Key decisions the court should make at the preliminary protective hearing:

- Should the child bereturned home immediately or kept in foster care prior to trial?
- What services will allow the child to remain safely at home?
- Will the parties voluntarily agree to participate in such services?
- Has the agency made reasonable efforts to avoid protective placement of the child?
- Are responsible relatives or other responsible adults available?
- Is the placement proposed by the agency the least disruptive and most family-like setting that meets the needs of the child?
- Will implementation of the service plan and the child's continued well-being be monitored on an ongoing basis by a GAL/CASA?
- Are restraining orders, or orders expelling an allegedly abusive parent from the home appropriate?
- Are orders needed for examinations, evaluations, or immediate services?
- What are the terms and conditions for parental visitation?
- What consideration has been given to financial support of the child?

Additional activities at the preliminary protective hearing:

- Reviewing notice to missing parties and relatives;
- Serving the parties with a copy of the petition;

- Advising parties of their rights;
- Accepting admissions to allegations of abuse or neglect.

Submission of reports to the court:

- The court should require submission of agency and/or law enforcement reports at least one hour prior to the preliminary protective hearing.
- Reports to the court should describe all circumstances of removal, any allegations of abuse or neglect, and all efforts made to try to ensure safety and prevent need for removal.

The court's written findings of fact and conclusions of law at the preliminary protective hearing should:

Be written in easily understandable language which allows the parents and all parties to fully understand the court's order.

If child is placed outside the home:

- Describe who is to have custody and where child is to be placed;
- Specify why continuation of child in the home would be contrary to the child's welfare (as required to be eligible for federal matching funds);
- Specify whether reasonable efforts have been made to prevent placement (including a brief description of what services, if any, were provided and why placement is necessary);
- Specify the terms of visitation.

Whether or not the child is returned home:

- Provide further directions to the parties such as those governing future parental conduct and any agency services to the child and parent agreed upon prior to adjudication.
- Set date and time of next hearing.

Resource Guideline

It is recommended that 60 minutes be allocated for each preliminary protective hearing.

Adjudication Hearing Checklist

Persons who should always be present at the adjudication hearing:

- Judge or judicial officer
- Parents whose rights have not been terminated, including putative fathers
- Relatives with legal standing or other custodial adults
- Assigned caseworker
- Agency attorney
- Attorney for parents (separate attorneys if conflict warrants)
- Legal advocate for the child and/or GAL/CASA
- Court reporter or suitable technology
- Security personnel

Persons whose presence may also be needed at the adjudication hearing:

- Age-appropriate children
- Extended family members
- Adoptive parents
- Judicial case management staff
- Law enforcement officers
- Service providers
- Other witnesses

Key decisions the court should make at the adjudication hearing:

- Which allegations of the petition have been proved or admitted, if any;
- Whether there is a legal basis for continued court and agency intervention;
- Whether reasonable efforts have been made to prevent the need for placement or to safely reunify the family.

Additional decisions at the adjudication hearing:

If the disposition hearing will not occur within a short time after the adjudication hearing, the judge may need to make additional temporary decisions at the conclusion of adjudication.

For example, the judge may need to:

- Determine where the child is to be placed prior to disposition hearing;
- Order further testing or evaluation of the child or parents in preparation for the disposition hearing;
- Make sure that the agency is, in preparation for disposition, taking prompt steps to evaluate relatives as possible caretakers, including relatives from outside the area;
- Order the alleged perpetrator to stay out of the family home and have no contacts with the child;
- Direct the agency to continue its efforts to notify noncustodial parents, including unwed fathers; and
- When the child is to be in foster care prior to disposition, set terms for visitation, support, and other intra-family communication including both parent-child and sibling visits.

The court's written findings of fact and conclusions of law at the adjudication hearing should:

- Accurately reflect the reasons for state intervention.
- Provide sufficiently detailed information to justify agency and court choices for treatment and services.
- Provide a defensible basis for refusing to return a child home or terminating parental rights if parents fail to improve.
- Be written in easily understandable language so that all parties know how the court's findings relate to subsequent case planning.
- Set date and time of next hearing, if needed.

Resource Guideline

It is recommended that a minimum of 30 minutes be allocated for each adjudication hearing.

Disposition Hearing Checklist

Persons who should always be present at the disposition hearing:

- Judge or judicial officer
- Parents whose rights have not been terminated, including putative fathers
- Relatives with legal standing or other custodial adults
- Assigned caseworker
- Agency attorney
- Attorney for parents (separate attorneys if conflict warrants)
- Legal advocate for the child and/or GAL/CASA
- Court reporter or suitable technology
- Security personnel

Persons whose presence may also be needed at the disposition hearing:

- Age-appropriate children
- Extended family members
- Adoptive parents
- Judicial case management staff
- Law enforcement officers
- Service providers
- Adult or juvenile probation or parole officer
- Other witnesses

Submission of reports to the court. Predisposition reports should include:

- A statement of family changes needed to correct the problems necessitating state intervention, with timetables for accomplishing them;
- A description of services to be provided to assist the family; and
- A description of actions to be taken by parents to correct the identified problems.

When the agency recommends foster placement, an affidavit of reasonable efforts should be submitted. The following are some additional key elements of the affidavit:

- A description of the efforts made by the agency to avoid the need for placement and an explanation why they were not successful;
- An explanation of why the child cannot be protected from the identified problems in the home even if services are provided to the child and family; and
- Identification of relatives and friends who have been contacted about providing a placement for the child.

Other information that should be included either in the affidavit of reasonable efforts or an accompanying court report is:

- A description of the placement and where it is located;
- Proposed arrangements for visitation;
- Placement of the child's siblings and, if they are to be apart, proposed arrangements for visitation;
- An appropriate long-term plan for the child's future; and
- Proposed child support.

Key decisions the court should make at the disposition hearing:

- What is the appropriate statutory disposition of the case and long-term plan for the child?
- Where should the child be placed?
- Does the agency-proposed case plan reasonably address the problems and needs of child and parent?
- Has the agency made reasonable efforts to eliminate the need for placement or prevent the need for placement?
- What, if any, child support should be ordered?
- When will the case be reviewed?

The court's written findings of fact and conclusions of law at the disposition hearing should:

- Determine the legal disposition of the case, including the custody of the child, based upon the statutory options provided under state law.
- State the long-term plan for the child (e.g., maintenance of the child in the home of a parent, reunification with a parent or relative, permanent placement of child with a relative, placement of the child in a permanent adoptive home.)
- When applicable, specify why continuation of child in the home would be contrary to the child's welfare.
- Where charged with this responsibility under state law and based upon evidence before the court, approve, disapprove or modify the agency's proposed case plan.
- Determine whether there is a plan for monitoring the implementation of the service plan and assuming the child's continued well-being? Is a GAL/CASA available to do this?
- When placement or services are ordered that were not agreed upon by the parties, specify the evidence or legal basis upon which the order is made.
- Specify whether reasonable efforts have been made to prevent or eliminate the need for placement.
- Specify the terms of parental visitation.
- Specify parental responsibilities for child support.
- Be written in easily understandable language so that parents and all parties fully understand the court's order.
- Set date and time of next hearing, if needed.

Resource Guideline

It is recommended that a minimum of 30 minutes be allocated for each disposition hearing.

Review Hearing Checklist

Persons who should always be present at the review hearing:

- Judge or judicial officer
- Parents whose rights have not been terminated, including putative fathers
- Age-appropriate children
- Relatives with legal standing or other custodial adults
- Foster parents
- Assigned caseworker
- Agency attorney
- Attorney for parents (separate attorneys if conflict warrants)
- Legal advocate for the child and/or GAL/CASA
- Court reporter or suitable technology
- Security personnel

Persons whose presence may also be needed at the review hearing:

- Extended family members
- Adoptive parents
- Judicial case management staff
- Service providers
- Adult or juvenile probation or parole officer
- Other witnesses
- School officials

Key decisions the court should make at the review hearing:

- Whether there is a need for continued placement of a child.
- Whether the court-approved, long-term permanent plan for the child remains the best plan for the child.
- Whether the agency is making reasonable efforts to rehabilitate the family and eliminate the need for placement of a child.
- Whether services set forth in the case plan and the responsibilities of the parties need to be clarified or modified due to the availability of additional information or changed circumstances.
- Whether the child is in an appropriate placement which adequately meets all physical, emotional and educational needs.
- Whether the terms of visitation need to be modified.
- Whether terms of child support need to be set or adjusted.
- Whether any additional court orders need to be made to move the case toward successful completion.
- What time frame should be set forth as goals to achieve reunification or other permanent plan for each child.

Submission of reports to the court:

Pre-Review Report

Pre-review reports by the child welfare agency and the GAL/CASA can serve the same purpose as predisposition reports. Pre-review reports should include:

- A statement of family changes needed to correct the problems necessitating state intervention, with timetables for accomplishing them;
- A description of services to be provided to assist the family; and
- A description of actions to be taken by parents to correct the identified problems.

Affidavit of Reasonable Efforts

When the agency recommends continued foster placement, an affidavit of reasonable efforts should be submitted. The following are some key elements of the affidavit:

- A description of the efforts made by the agency to reunify the family since the last disposition or review hearing and an explanation why those efforts were not successful;
- An explanation why the child cannot presently be protected from the identified problems in the home even if services are provided to the child and family.

The court's written findings of fact and conclusions of law at the review hearing should:

- Set forth findings as to why the children are in need of continued placement outside the parents' home or continued court supervision, including the specific risks to the child;
- Set forth findings as to whether and why family reunification and an end to court supervision continues to be the long-term case goal;
- Set forth findings as to whether the agency has made reasonable efforts to eliminate the need for placement, with specific findings as to what actions the agency is taking;
- Set forth detailed findings of fact and conclusions of law as to whether the parents are in compliance with the case plan and identify specifically what further actions the parents need to complete;
- Set forth orders for the agency to make additional efforts necessary to meet the needs of the family and move the case toward completion;
- Be written in easily understandable language which allows the parents and all parties to fully understand what action they must take to have their children returned to their care;
- Approve proposed changes in the case plan and set forth any court-ordered modifications needed as a result of information presented at the review;
- Identify an expected date for final reunification or other permanent plan for the child;
- Make any other orders necessary to resolve the problems that are preventing reunification or the completion of another permanent plan for the child; and
- Set date and time of next hearing, if needed.

Resource Guideline

It is recommended that 30 minutes be allocated for each review hearing.

Permanency Planning Hearing Checklist

Persons who should always be present at the permanency planning hearing:

- Judge or judicial officer
- Age-appropriate children
- Parents whose rights have not been terminated, including putative fathers
- Relatives with legal standing or other custodial adults
- Assigned caseworker
- Agency attorney
- Attorney for parents (separate attorneys if conflict warrants)
- Legal advocate for the child and/or GAL/CASA
- Court reporter or suitable technology
- Security personnel

Persons whose presence may also be needed at the permanency planning hearing:

- Extended family members
- Foster parents
- Prospective adoptive parents
- Judicial case management staff
- Service providers
- Adult or juvenile probation or parole officer
- Other witnesses

Key decisions the court should make at the permanency planning hearing:

- The child is to be returned home on a specific date.
- The child will be legally freed for adoption.
- The custody of the child will be transferred to an individual or couple on a permanent basis.
- The child will remain in foster care on a permanent or long-term basis.
- Foster care will be extended for a specific time, with a continued goal of family reunification.

Submission of reports to the court. A report for a permanency planning hearing should:

- Specify the relief being sought and address the same issues that the judge needs to determine.
- Examine the reasons for excluding higher priority options.
- Set forth a plan to carry out the placement decision.

When the report or petition requests that a child be returned home on a date certain, it should set forth:

- How the conditions or circumstances leading to the removal of the child have been corrected;
- The frequency of recent visitation and its impact on the child; and
- A plan for the child's safe return home and follow-up supervision after family reunification.

When the report requests termination of parental rights, it should set forth:

- Facts and circumstances supporting the grounds for termination; and
- A plan to place the child for adoption.

When a custody award to an individual or couple is proposed, the report should set forth:

- Facts and circumstances refuting the grounds for termination of parental rights (demonstrating the fitness of the parents) or showing that although the child cannot be placed with parents, termination is not in the best interests of the child;
- Facts and circumstances demonstrating the appropriateness of the individual or couple to serve as permanent caretaker of the child; and
- A plan to ensure the stability of the placement.

When permanent foster care with a specific family is proposed, the report should set forth:

- Facts and circumstances refuting the grounds for termination of parental rights (demonstrating the fitness of the parents) or showing that although the child cannot be placed with parents, termination is not in the best interests of the child;
- Facts and circumstances explaining why custody is not practical or appropriate;
- Facts and circumstances demonstrating the appropriateness of the foster parents and the foster parents' commitment to permanently caring for the child; and
- A plan to ensure the stability of the placement.

When long-term foster care is proposed because the child cannot function in a family setting, the report should set forth:

- Facts and circumstances leading to that conclusion; and
- A plan to prepare the child to live in a family setting at the earliest possible time and for visitation with parents and siblings.

When long-term foster care in connection with independent living arrangements is proposed, the report should set forth:

- Facts and circumstances refuting the grounds for termination of parental rights (demonstrating the fitness of the parents) or showing that although the child cannot be placed with parents, termination is not in the best interests of the child;
- Facts and circumstances explaining why continued custody or permanent foster care is not appropriate at the same time that independent living services are being provided; and
- A plan to prepare the child for independent living and for visitation between the child, parents and siblings.

When an extension of foster care for a time certain is proposed with a goal of reunification, the report should set forth:

- Facts and circumstances showing that the parents and child have a strong and positive relationship, parents have made substantial progress toward the child's return home, and return home is likely within the next six months.
- Facts and circumstances showing why it is too early to specify a time certain for reunification.
- A plan to achieve reunification within six months.

The court's written findings of fact and conclusions of law at the permanency planning hearing should:

- Be prepared within a reasonable time after the permanency planning hearing;
- Be written in easily understandable language so that parents and all parties fully understand the court's order;
- Provide documentation for further proceedings;
- Address the same issues as those to be addressed in the report discussed above; and
- Set date and time of next hearing, if needed.

Resource Guideline

It is recommended that 60 minutes be allocated for each permanency planning hearing.

Termination of Parental Rights Hearing Checklist

Persons who should always be present at the termination of parental rights hearing:

- Judge or judicial officer
- Parents, including putative fathers
- Assigned caseworker
- Agency attorney
- Attorney for parents (separate attorneys if conflict warrants)
- Legal advocate for the child and/or GAL/CASA
- Court reporter or suitable technology
- Security personnel

The following are persons whose presence may also be needed at the termination of parental rights hearing:

- Age-appropriate children whose testimony is required
- Judicial case management staff
- Law enforcement officers
- Service providers
- Adult or juvenile probation or parole officer
- Other witnesses

Key decisions the court should make at the termination of parental rights hearing:

- Whether the statutory grounds for termination of parental rights have been satisfied.
- Whether termination is in the best interests of the child.

The court's written findings of fact and conclusions of law at the termination of parental rights hearing should:

- Indicate whether or not termination of parental rights is granted.
- Address whether the grounds for termination were satisfied and, if so, whether termination was in the best interests of the child.
- Be sufficient for the purpose of appellate review.
- Set schedule for subsequent judicial review.

Resource Guideline

It is recommended that a minimum of 60 minutes be allocated for each termination of parental rights hearing.

Adoption Hearing Checklist

Persons who should always be present at the uncontested adoption hearing:

- Judge or judicial officer
- Adoptive parents
- Assigned caseworker
- Legal advocate for the child and/or GAL/CASA
- Court reporter or suitable technology
- The child

Persons who should always be present at the contested adoption hearing:

- Judge or judicial officer
- Prospective adoptive parents
- Assigned caseworker
- Agency attorney
- Legal advocate for the child and/or GAL/CASA
- Parties contesting the adoption
- Attorneys for all parties
- Court reporter or suitable technology
- Security personnel

Persons whose presence may also be needed at the contested adoption hearing:

- The child
- Judicial case management staff
- Other witnesses

The court's written findings of fact and conclusions of law at the adoption hearing should:

- Determine whether all of the necessary consents to adoption have been provided, including the consent of the agency with custody of the child, the consent of the child (if the child is old enough that consent is required under state law), and, in some cases, the consent of parents whose rights have not been terminated.
- Thoroughly describe the conditions and circumstances under which parental consent to adoption was obtained. When there has been no prior termination of parental rights in some states, parental consent must occur in the presence of the judge. Other states require a signed voluntary relinquishment of parental rights.
- Determine whether the consent was voluntary and informed and that all alternatives to adoption were explained.
- Determine that the child is doing well in the adoptive home and that the adoptive parents have made a clear and knowledgeable commitment to care for the child on a permanent basis.
- Determine that the adoptive parents fully understand the legal and financial consequences of adoption. Review with the parents and agency the need for and sufficiency of any adoption subsidy arrangements.
- At contested adoption hearings, determine whether the adoption should be granted. A contested adoption hearing must be conducted with procedural fairness, including notice to the parties and the opportunity to be represented by counsel.
- Conclude the proceeding without undue delay, applying principles of case flow management.

Resource Guideline

It is recommended that a minimum of 30 minutes be allocated for each adoption hearing.

Glossary

Adjudication hearing - In child welfare proceedings, the trial stage at which the court determines whether allegations of dependency, abuse or neglect concerning a child are sustained by the evidence and, if so, are legally sufficient to support state intervention on behalf of the child; provides the basis for state intervention into a family, as opposed to the disposition hearing which concerns the nature of such intervention; in some states, adjudication hearings are referred to as 'jurisdictional' or 'fact-finding' hearings.

Adoptive parent - The adult person with whom a relationship is legally established to a child not biologically related. Under the adoptive relationship, the child becomes the heir and is entitled to all other privileges belonging to a natural child of the adoptive parent.

Adoption hearing - Judicial proceeding in which a relationship is legally established between adult individual(s) and a child not biologically related.

Case flow management - Administrative and judicial processes designed to reduce delays in litigation; processes which assist the court in monitoring child welfare agencies to make sure dependency cases are moved diligently and decisively toward completion.

Child abuse - To hurt or injure a child by maltreatment. As defined by statutes in the majority of states, generally limited to maltreatment that causes or threatens to cause lasting harm to a child.

Child custody - Legal authority to determine the care, supervision, and discipline of a child; when assigned to an individual or couple, includes physical care and supervision. Includes guardianship of the person of a minor such as may be awarded by a probate court.

Child neglect - To fail to give proper attention to a child; to deprive a child; to allow a lapse in care and supervision that causes or threatens to cause lasting harm to a child.

Court Appointed Special Advocate (CASA) - A specially screened and trained volunteer, appointed by the court, who conducts an independent investigation of child abuse, neglect, or other dependency matters, and submits a formal report proffering advisory recommendations as to the best interests of a child. In some jurisdictions, volunteers without formal legal training, such as CASAs, are appointed to represent abused and neglected children, serving in the capacity of a Guardian ad Litem. See Guardian ad Litem.

Dependent child - A young person subject to the jurisdiction of the court because of child abuse or neglect.

Direct calendaring - An administrative scheduling system used by courts in which child abuse and neglect cases involving a single family are assigned to a single judge or judicial officer at the time the case is first filed, and for the duration of government involvement with a specific family. The initially-assigned judge conducts all subsequent hearings, conferences and trials.

Disposition hearing - The stage of the juvenile court process in which, after finding that a child is within jurisdiction of the court, the court determines who shall have custody and control of a child; elicits judicial decision as to whether to continue out-of-home placement or to remove a child from home.

Diversion programs - Community-based services designed to prevent the necessity of child abuse, neglect or other dependency matters coming before the court.

Formal mediation - Structured negotiations involving parents, social service agencies, and independent, third-party representatives involved in reaching joint solutions in matters before the court.

Foster care - Temporary residential care provided to a minor child placed pursuant to a neglect or dependency hearing; can include care by a non-biological foster family, group care, residential care, or institutional care.

Foster Care Review Board (FCRB) - A panel of screened and trained volunteers preferably appointed by juvenile or family courts to: regularly review cases of children in substitute placement such as foster care; examine efforts to identify a permanent placement for each child; and proffer advisory recommendations to the court.

Foster family care - A form of foster care involving placement of a child with a non-biological family that is approved and supervised by the state.

Guardian ad litem - 1. In certain dependency matters, a person with formal legal training appointed by a judge to represent the best interests of an allegedly abused or neglected child; differs from the legal advocate for the child who specifically represents the child's wishes before the court. See Legal advocate for the child. 2. A recruited, screened and trained citizen volunteer without formal legal training, appointed by a judge to represent the best interests of an allegedly abused or neglected child. See Court Appointed Special Advocate (CASA).

Guardianship - A legally established relationship between a child and adult who is appointed to protect the child's best interests and to provide the child's care, welfare, education, discipline, maintenance and support. Where guardianship is awarded to an individual or couple, it includes the right to physical possession of the child. In many states, guardianship of this type is awarded by the probate court. Therefore, appointing a guardian for a foster child may require the action of two courts: the court hearing the abuse or neglect (e.g., the juvenile or family court) and the probate court.

Judicial officer - Person who serves in an appointive capacity at the pleasure of an appointing judge, and whose decisions are subject to review by that judge; referred to in some jurisdictions as associate judges; magistrates; referees; special masters; hearing officers; commissioners.

Judicially supervised settlement conference - A judicially-mandated meeting at which the judge is present, which involves all attorneys and parties to a proceeding. The meeting typically occurs at a fixed time and place at least 10 days before a trial, and provides identification of issues to be tried, experts to be called, necessary reports, and witness availability.

Judge - One who conducts or presides over a court of justice and resolves controversies between parties. In the foregoing text, the term also encompasses persons serving in an appointive capacity whose decisions are subject to review by a judge, including associate judges, magistrates, referees, special masters, hearing officers, and commissioners.

Legal advocate for the child - In certain dependency matters, a person with formal legal training appointed by a juvenile or family court to specifically represent the wishes of an allegedly abused or neglected child under the court's jurisdiction; differs from a Guardian ad litem appointed to represent the best interests of a child before the court. See Guardian ad litem.

Long-term foster care - Extended residential care provided to a minor child placed pursuant to a neglect or dependency hearing; can include care by a non-biological foster family, group care, residential care, or institutional care.

Master calendaring - An administrative scheduling system used by courts in which child abuse and neglect cases may be reassigned to different judges at different stages of the case.

Mediation - Process by which a neutral mediator assists all of the parties in voluntarily reaching a consensual agreement about issues at hand; a process of facilitated communication between parties designed to resolve issues and agree upon a plan of action.

Motion - An application to a court made in reference to a pending action, addressed to a matter within the discretion of a judge.

Permanency planning hearing - A special type of post-dispositional proceeding designed to reach a decision concerning the permanent placement of a child; the time of the hearing represents a deadline within which the final direction of a case is to be determined.

Petition/pleading - A formal written request or 'prayer' for a certain thing to be done.

Preliminary protective hearing - The first court hearing in a juvenile abuse or neglect case, referred to in some jurisdictions as a 'shelter care hearing,' 'detention hearing,' 'emergency removal hearing,' or 'temporary custody hearing'; occurs either immediately before or immediately after child is removed from home on an emergency basis; may be preceded by an *ex parte* order directing placement of the child; in extreme emergency cases may constitute the first judicial review of a child placed without prior court approval.

Pre-trial settlement conference - A meeting of attorneys and parties to a proceeding held for the purpose of reaching a negotiated settlement involving joint solutions.

Putative father - The alleged or supposed male parent; the person alleged to have fathered a child whose parentage is at issue.

Reasonable efforts - Public Law 96-272, the Adoption Assistance and Child Welfare Act of 1980 requires that "reasonable efforts" be made to prevent or eliminate the need for removal of a dependent, neglected, or abused child from the child's home and to reunify the family if the child is removed. The reasonable efforts requirement of the federal law is designed to ensure that families are provided with services to prevent their disruption and to respond to the problems of unnecessary disruption of families and foster care drift. To enforce this provision, the juvenile court must determine, in each case where federal reimbursement is sought, whether the agency has made the required reasonable efforts. (42 U.S.C. 671(a)(15), 672(a)(1).)

Residential care - A form of foster care involving placement in group or congregate care.

Review hearing - Court proceedings which take place after disposition in which the court comprehensively reviews the status of a case, examines progress made by the parties since the conclusion of the disposition hearing, provides for correction and revision of the case plan, and makes sure that cases progress and children spend as short a time as possible in temporary placement.

Stipulation - An agreement, admission, or concession made by parties in judicial proceedings or by their attorneys, relating to business before the court.

Termination of parental rights hearing - A formal proceeding usually sought by a state agency at the conclusion of dependency proceedings, in which severance of all legal ties between child and parents is sought against the will of one or both parents, and in which the burden of proof must be by clear and convincing evidence; the most heavily litigated and appealed stage of dependency proceedings; also referred to in some states as a 'severance,' 'guardianship with the power to consent to adoption,' 'permanent commitment,' 'permanent neglect,' or 'modification' hearing.

Voluntary agreement for care - Arrangement with a public child protection agency for the temporary placement of a child into foster care, entered into prior to court involvement, and typically used in cases in which short-term placement is necessary for a defined purpose such as when a parent enters in-patient hospital care; a method of immediately placing child in foster care with parental consent prior to initiating court involvement, thereby avoiding the need to petition the court for emergency removal.

Excerpted, in part, from *Glossary of Selected Legal Terms for Juvenile Justice Personnel* (1988), and *Integrated Glossary of Normal Child Sexuality and Child Sexual Abuse Terms for Juvenile Justice Professionals* (1987), National Council of Juvenile and Family Court Judges, Reno, Nevada.

Appendices

APPENDIX A

TIME RESOURCE CALCULATIONS TO IMPLEMENT RESOURCE GUIDELINES TABLE OF CONTENTS

Appendix A

A. Introduction

The Resource Guidelines described in this document represent the accumulation of years of experience by judges and court personnel involved in cases of child abuse and neglect. They represent a combination of "best practice" as well as a reasoned estimate of the resources required to conduct such practice.

The guidelines were not developed in a vacuum, but resulted instead from the working experience of many courts, most notably the Hamilton County Juvenile Court in Cincinnati, Ohio. Throughout the deliberations resulting in the final document, Hamilton County experience was observed, measured and documented to provide a base of reality for understanding both the need for good practice and the requirements necessary to assure it can occur.

This technical appendix is intended to guide court administrators and judges estimating docket time, judicial time and ancillary court staff time necessary to implement the Resource Guidelines. Estimates are provided of the annual time requirements for new cases from initial disposition through ongoing case review to post-initial disposition.

B. How Were the Estimates Derived?

Three major factors affect time and resource estimates for the handling of abuse and neglect cases in the juvenile court. They are: the types of cases processed by the court; the time necessary at each hearing to attend adequately to matters of importance; and "expansion factors" such as the degree of case continuation and extensive contests that inflate the resource requirements of the typical case.

In deriving estimates for case processing, each of these factors was examined in a sample of cases from Hamilton County, Ohio. Data were extracted from the management information system, and results were interpreted with the help of judicial officers in the court. Project staff also attended and observed a significant number of hearings of various case types to determine time requirements for aspects of each hearing.

The resulting analysis represents a hybrid of numerical calculations tempered and adjusted by interpretive comments from court professionals. Project staff also adjusted the findings, to a small degree, when it was clear that Ohio law or Hamilton County practice differed in a meaningful way from that commonly found in other juvenile courts across the country. It is safe to assume that the resulting estimates form a rational starting point from which to determine time resource requirements consistent with the practice implications in this document. The reader is cautioned not to use the estimates in a wholesale fashion, without attempting to customize the analysis to the local situation. It is reasonable to use these calculations as a basis for further examination of the needs of the court in adequately dealing with these cases.

1. Configuration of Cases

Figure 1 on page 128 represents a typical case progression pattern for 100 new, hypothetical case filings in Hamilton County. The flow chart follows these cases from original case filing to initial disposition and through case closure. As is shown in Figure 1, these 100 cases follow varied paths and have significantly different life spans. At the point of initial disposition, there are six distinctly different legal statuses into which cases can fall:

- **Case Dismissed** - no further action is required by the court;
- **Custody to Relative or Non-Relative**- the court awards legal custody to either parent or to any other relative or non-relative who has filed a motion for legal custody;
- **Protective Supervision** - the court allows the child to remain in the home subject to conditions set by the court;
- **Temporary Custody** - the court temporarily commits the child to a public or private childrens' services agency and vests custody in that agency;
- **Permanent Custody** - the court permanently commits the child to a public or private childrens'

services agency and vests all parental rights with that agency; and

- **Long Term Foster Care** - the court places the child in long-term foster care with a public or private agency.

In most courts, these initial findings at disposition are known. What is often less well known is the flow and diversification that occurs subsequent to the initial disposition. Cases often progress to another legal status based on post-disposition motions or findings at review hearings. It is not uncommon for a case to have multiple legal statuses prior to being closed.

For example, in 100 typical cases in the Hamilton County Juvenile Court, 58 were initially disposed as cases involving temporary custody. Of these, only 20 actually were closed without, at some point, changing to another legal status (protective supervision, permanent custody, etc.). Similar case complexities are evident for cases originating as protective supervision initial dispositions.

The importance of this type of case flow analysis is that each of these case types has different resource requirements and time frames. As seen in Figure 1, the overall case age at closure is significantly different for each type of case. During the life span of each case, the amount of time and frequency for hearings differ, resulting in different resource requirements.

In this analysis, the model of case flow depicted in Figure 1 served as the basis for deriving estimates. That is, the docket, judicial officer and ancillary court staff time requirements assume a pattern of case transactions equal to that shown in the diagram. While it is displayed, for simplicity, as a "typical 100 cases," the model was developed using a much larger sample of cases from Hamilton County over an extended period of time.

2. Individual Hearing Time Requirements

Each case type requires a series of pre-disposition and post-disposition hearings based on legal status and life of the case. In this analysis, the number of each type of hearing was calculated for each case type. As cases changed legal status, the hearing requirement and frequency was shifted to the new status.

This information was merged with estimates of required or recommended hearing time for each type of hearing based on the "good practice" principles in the Resource Guidelines. These two calculations were then summed for an entire case over its many legal statuses and case life.

Taken as a whole, these calculations provide a reasonable estimate of the average hearing time requirements for each case type over its life, and, in total, for the entire workload of the court for all cases. Using the average length of time a case remained in a legal status, an average number of post-dispositional hearings was also calculated. These latter calculations were used in deriving annual time requirements per case.

3. Expansion Factors

A final calculation was required to correct for atypical case processing occasioned by delays or continuances or by actively contested cases where trials far exceed the 'average' docket time allocated for a hearing. While these instances are in the minority, they do account for a significant additional resource requirement when they occur.

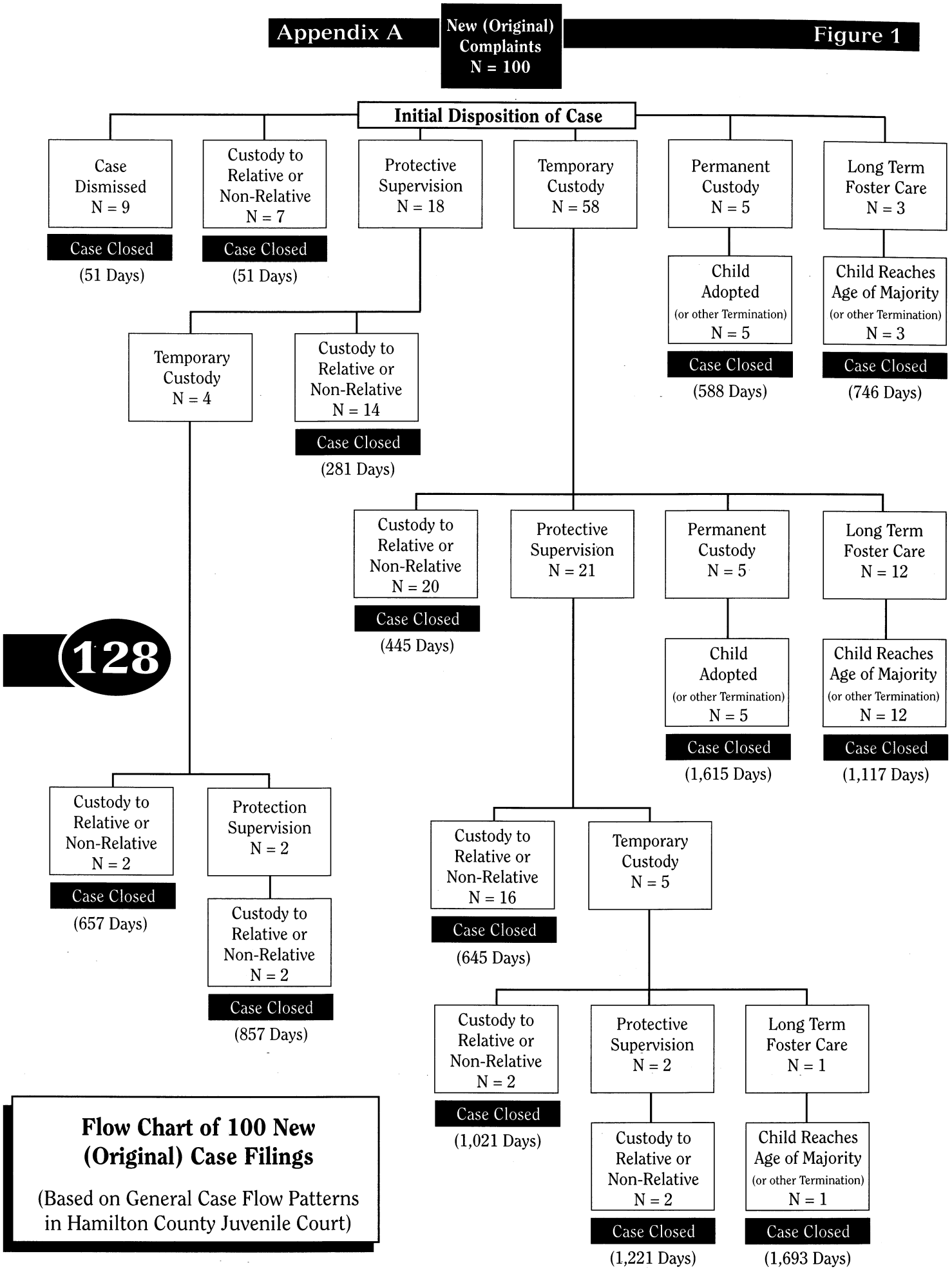
Project staff interviewed court staff, prosecutors and attorneys and relied on hearing observations to assess the impact of these 'expansion factors'. As might be expected, there were significant differences in the chance of, and requirement expansion for various types of cases. These factors were included in the calculations to provide a realistic picture of the time requirements for all types of cases and contingencies. In Hamilton County the greatest 'expansion requirement' was the result of trials in permanent custody cases.

C. Time Resource Calculations

The analyses described above resulted in a matrix of numbers that was then recombined to provide an overall

Appendix A

Figure 1



Flow Chart of 100 New (Original) Case Filings

(Based on General Case Flow Patterns in Hamilton County Juvenile Court)

case time requirement estimate. Time estimates, presented in Table 1, are divided into two distinct phases of case processing: pre-initial disposition and post-initial disposition. This distinction is made for two reasons. First, the pre-initial disposition requirements for a case are more similar across case types than are post-initial disposition requirements. That is, the court activity required to get a case to initial disposition is relatively similar for all incoming cases.

State law generally sets a time period within which cases should reach initial disposition. In Ohio, for example, all cases are to be initially disposed within 90 days of the filing of the original petition. At this point in case processing, a second set of time requirements commences, limiting the period within which the court and social service agency must make final determinations in the case.

Second, the total amount of time required for a court annually is the sum of the average time required to bring new cases to an initial disposition, and the time required to review and otherwise deal with the average number of post-initial disposition cases that are active during the year. To accurately estimate resource requirements, these two entities must be treated separately.

Table 1 provides resource requirements for Docket Time, Judicial Officers and Court Staff. These three separate estimates were derived from observations and interviews of judicial officers and court staff in handling cases. At the pre-initial disposition phase, for example, 3.9 hours per case of docket time are associated with 6.1 hours of judicial officer time and 12 hours of court staff time. The judicial officer time estimates in Table 1 include the additional hours required for case preparation and review. Court staff time includes the extra responsibilities for case preparation, file administration, scheduling and other duties.

Table 1
Time Requirements to Implement Resource Guidelines

Resource Category	Pre-Initial Disposition	Post-Initial Disposition
	(hours/case)	(hours/case)
Docket Time	3.9	3.75
Judicial Officers	6.1	6.6
Other Court Staff	12.0	11.3

The numbers presented in Table 1 represent an "annual estimate" of time requirements for the total caseload configuration presented above. That is, the total, per case time, for reaching initial disposition in new cases, and the review and other court activity, for one year, for all active cases. While Figure 1 indicates that cases continue for longer than a one year period, these numbers were derived to allow for annual planning and resource allocation in the court.

D. How to Use These Calculations

While deceivingly simple, the data presented in this section can be of significant value to a court administrator or judge attempting to understand and plan for the resources necessary to implement the guidelines. The "bottom line" figures presented in Table 1 represent a series of investigations and analyses that combine factors associated with resource allocation.

To use these calculations in planning, the administrator must know (or estimate) the potential number of new incoming case filings for dependent cases in the next year. This number can be reasonably estimated from past activity. Secondly, the average number of active, post-disposition cases must be determined.

To assess resources required, the multiplication of new cases by the appropriate number from Table 1, plus the average number of active cases multiplied by the post-initial disposition figure in Table 1, will provide an estimate of total resources required.

So, for example, a court anticipating 100 new case filings (100 x 3.9 hours = 390 hours) and with an average active caseload of 200 on-going post-dispositional cases (200 x 3.75 hours = 750 hours) should estimate 1,140 hours of docket time for the dependency workload. Judicial officer and court staff time can be similarly computed.

This initial estimate must, however, be tempered by differences in court structures, rules and statutes. Further, the implementation of the guidelines should, if successful, alter the case processing culture of the court itself, thus impacting subsequent years' estimates. Finally, it is crucial to realize that these calculations were derived largely from a single court with a history of practice similar to that prescribed in the Resource Guidelines. Peculiarities of Ohio law and procedure as well as the culture of the Hamilton County Juvenile Court are firmly imbedded both in the guidelines themselves and in these calculations. As such, there are limitations to their general application. It is believed, however, that they provide a reasoned and solid foundation upon which to build resource estimates for improved practice in dealing with cases of child abuse and neglect.

Note: A complete technical report describing, in detail, the interim calculations and analyses used to derive these data can be obtained from:

Richard J. Gable
Director of Applied Research
National Center for Juvenile Justice
710 Fifth Avenue, Third Floor
Pittsburgh, Pennsylvania 15219

APPENDIX B

ALTERNATIVES TO CONTESTED LITIGATION IN CHILD ABUSE AND NEGLECT CASES TABLE OF CONTENTS

Appendix B

A. Pre-trial Settlement Conferences

1. Settlement Conferences Conducted by the Parties

Child abuse and neglect cases are usually resolved without contested hearings by agreement of the parties. Because an outcome reached by agreement is often superior to an outcome reached through litigation, courts should encourage settlement without contested litigation.

A key advantage to mandatory pre-adjudication and pre-disposition settlement conferences at which all parties and attorneys must participate is that attorneys are better informed about the case and better able to perform in court. Mandatory pre-trial settlement conferences are especially useful in courts where many attorneys habitually delay settlement discussion until shortly before trial. By compelling attorneys and parties to meet and discuss a case well in advance of trial, settlement conferences encourage early case preparation by attorneys.

In child abuse and neglect cases, success in accomplishing what is best for the child requires ongoing cooperation between parents and the agency. Contested hearings often create an adversarial atmosphere that may prevent a cooperative relationship from developing. After a contested hearing, the parents may be less willing to work with the agency because they feel the outcome of the case was imposed upon them.

The process of reaching a negotiated settlement requires that the parties seek to understand each other's positions and work together to devise solutions. Misunderstandings and misperceptions can be corrected. The parties can be encouraged to view themselves less as adversaries and more as persons who have an interest in working together to solve common problems.

Mandatory settlement conferences require close cooperation between parents and the social service agency. A negotiated settlement requires parties to devise joint solutions. Parties are more likely to view themselves less as adversaries and more as allies in solving serious problems. Parents involved in determining case outcomes often have an increased commitment to the success of case plans. The resulting outcomes not only have a better chance of being successfully implemented, but often are achieved at significantly lower costs than litigated outcomes.

Dependency cases involve numerous parties and attorneys, who often have multiple cases in the courthouse. It is more efficient to schedule settlement conferences in or near the courthouse for the convenience of all parties. Settlement conferences should be held at least 10 days before a scheduled hearing, and conducted in or near the courthouse environment to provide immediate judicial availability and attention to any problems which might arise during the settlement process.

Settlement conferences reduce court workloads. Advance scheduling of settlement conferences allows time for a follow-up conference if significant progress is made but full agreement not achieved. Advance scheduling allows the court time to organize and readjust case calendaring. Without a timely pre-trial settlement conference, parties are more likely to settle just before a trial is to begin, disrupting court calendars and staff allocations. Settlements achieved just prior to trial make it difficult for the court to maintain firm trial dates and adhere to sound principles of case flow management.

Immediately or no later than 24 hours after completion of a conference, the parties should inform the court whether a settlement was reached. If no settlement was reached, parties should inform the court at least one week in advance of the trial date of the estimated court time needed for trial and should submit statements concerning agreed and disputed facts. If the judge sees the need for a judicially-supervised pre-trial conference, this can take place prior to the time set for the trial.

2. Judicially-Supervised Settlement Conferences

The parties often will seek to reach agreements on their own, but courts may, nevertheless, encourage the settle-

ment of cases by mandating judicially-supervised conferences. In jurisdictions which mandate settlement conferences, courts should require that they take place at a fixed time and place at least 10 days before the trial. All parties and attorneys should be required to attend.

Consideration should be given to judicially supervised pre-trial conferences whenever certain circumstances arise. Among these are:

- Unexplained case delays;
- Disputes concerning discovery;
- Service of process remains incomplete after a reasonable time without a satisfactory explanation by the petitioner;
- Issues under dispute need; clarification to shorten trial time; and
- Evidentiary or other legal issues must be resolved prior to trial.

Judicially-supervised settlement conferences are advisable whenever parties request a hearing which will take a substantial period of time. Settlement conferences can be advisable before any type of contested hearing such as adjudication, disposition, review, or a permanency planning hearing. Assuming the case cannot be settled, the purpose of these hearings is for the court to control to the extent that it can, the legal proceedings that are about to take place. To this end, the settlement conference should be able to identify issues to be tried, experts to be called, necessary reports, and determine the availability of each witness to be called.

It is important that the court notify all parties that they should complete discovery without any hearings on the issues. Petitioners should give all information relating to a case to the parties without the necessity of a court order. A standing court order on the discovery issue may be effective in this regard. A successful settlement conference can offer the court the opportunity to ensure that the trial will be well-run, will last an anticipated period of time, and will involve no surprises.

All settlement conferences must be structured so that the court is certain that any settlement agreements reflect the interests of the various parties. There must be competent representation for the petitioner, the parents, and the child. All parties should be present, including age-appropriate children. All settlement proposals should be reviewed by the court. The court should be watchful for settlements which do not recognize the alleged parental behavior on which the original petition was brought. Case plans will not address the critical problems that parents have exhibited if the settlement does not reflect their acknowledgement of the problems.

B. Formal Mediation

1. General Information

The use of mediation in abuse and neglect cases before the juvenile court should not be confused with community diversion programs that may involve mediation. The use of community diversion programs in cases of mild abuse or neglect or parent-child conflicts, may make it possible to protect children without the need for court involvement. Similarly, petitions may be dismissed or held in abeyance for short periods in less serious cases to determine whether parental cooperation with a diversion program is a safe alternative to juvenile court involvement. Community diversion programs can be a useful means of avoiding needless court proceedings.

Mediation in juvenile cases is a distinct alternative characterized by discussions and negotiations concerning matters before the court. These discussions are facilitated by one or more court-appointed, neutral, third-party mediators and involve all relevant case participants and attorneys. Juvenile courts recognize that the adversarial process in child abuse and neglect cases can sometimes break down communications and create hostility, divisiveness and rigid position-taking between participants, most notably the parents and the child protective agency. Mediation in child abuse and neglect cases, on the other hand, is a process which brings all significant case participants together in a

non-adversarial setting. Communication is facilitated by neutral but highly-skilled and experienced mediators, who thoroughly, constructively and humanely attempt to resolve case issues.

The process should typically include the following individuals at various stages of the mediation session:

- Mediator(s); preferably one male and one female
- Parents whose rights have not been terminated, including putative fathers
- Relatives with legal standing or other custodial adults
- Assigned caseworker
- Age-appropriate children
- Agency attorney
- Attorney for parents (separate attorneys if conflict warrants)
- Legal advocate for the child and/or GAL/CASA
- Service providers
- Adult or juvenile probation or parole officer

Mediation programs assist juvenile courts by:

- Facilitating the development of early, appropriate and comprehensive settlements which serve to protect the safety and best interests of children;
- Preserving the dignity and involvement of family members and encouraging sensitivity;
- Emphasizing family preservation and strengthening whenever possible, identifying and utilizing resources within the family first and within the community if required;
- Facilitating a full exchange of the most current case information, clarifying the roles and responsibilities of each of the participants, and encouraging the accountability of family members and professionals interacting with the family;
- Separating the personal issues and biases of the participants from factual information; facilitating constructive communication and reduction of acrimony; creatively intervening to resolve conflict and provide therapeutic interventions as required and appropriate;
- Providing various participants with information on the court process, child development, family dynamics, and available services;
- Reducing the family's sense of alienation from the child protective system and the courts.

By formalizing the settlement process, mediation can often replace contested hearings by resolving cases in a more constructive format than adversarial proceedings. Mediation can replace hallway negotiations between a few parties, entailing partial and incomplete exchanges of information, with formal sessions involving all relevant parties and a full exchange of information. The active involvement of mediators can protect against imbalances of power between participants resulting from various levels of skill, experience, professional status or cultural differences.

Mediation should always focus on preserving the safety and best interests of the children while simultaneously attempting to validate the concerns, points of view, feelings, and resources of all participants, especially family members. Mediators orient and educate family members, clarify issues, facilitate exchange of current case information, and creatively intervene to resolve roadblocks to settlement. Mediation also seeks to leave family members with an experience of having been significant, respected and understood participants in the court process, and with an investment in accepting and complying with the terms of the resolution and/or decision of the court. Initial indications in jurisdictions where mediation is used are that mediation is typically viewed by family members as less adversarial and more friendly and empowering than traditional court processes. Existing mediation programs believe that mediation may help reduce the degree of animosity toward "the system" and perhaps allow parents to fo-

cus more energy on child protection and other parenting issues.[1]

Mediation provides an avenue for revisiting past conflicts and issues which have created roadblocks to constructive communication and problem-solving. When such impasses are addressed and resolved, or even when they are merely validated, resistance and defensiveness are often reduced to a degree which permits settlement of some or all issues. Participants also find that negative preconceptions are sometimes significantly reduced during mediation discussions, thereby permitting consideration of options formerly ruled out or never considered. As another benefit of mediation, less resistance may ultimately be encountered in holding family members accountable for commitments they have made in a mediation process in which they have been active participants. The mediation process itself can also serve as a model for future nonviolent and constructive problem solving and conflict resolution.

The use of mediation in abuse and neglect cases is an area of increasing interest and the subject of a number of recent articles and reports.[2] Many juvenile and family courts are struggling to find better ways of handling escalating caseloads. Courts may want to consider mediation as a means for reaching more productive and constructive solutions than can be achieved through formal adversarial proceedings in certain types of cases. Although no single mediation model exists, research documenting several court mediation programs provides important information on this form of alternative dispute resolution.[3]

It must be noted, however, that mediation can never substitute for the appropriate training, compensation, caseload levels, and the active involvement of professionals participating in child abuse and neglect cases.

2. Guidelines for Implementing Mediation Programs

• Mediation programs should be court-based or court-supevised and have strong judicial and interdisciplinary support.

Courts interested in establishing a mediation program should administer the program themselves or contract for court-supervised mediation services from a private provider. Initial resistance and outright opposition can be minimized if courts invite representatives from all professions to be affected by mediation to participate in the planning process. Such involvement of the mediation stakeholders can engender strong interdisciplinary support for the program.

• Mediators must be highly trained, experienced and skilled professionals, have credibility with the court and related professionals, and be perceived by family members as being neutral and having the best interests of the child and family at heart.

Mediators must not only be skilled at conflict resolution and facilitating negotiations, they must also have a thorough understanding of the child welfare system and juvenile and family court. To help ensure that the agreements formulated are appropriate and in the best interests of children, mediators also should have a thorough understanding of the dynamics of child abuse and neglect as they affect individuals and family systems, including such issues as child development, substance abuse, domestic violence, and psychopathology. Whether the mediator's formal profession is that of a therapist, attorney, social worker or probation officer, he or she should have significant experience in child abuse and neglect cases as well as skills in the area of mediation. Mediators should not be current employees of the child protection agency, because such employment would interfere with the perception of mediator neutrality by family members.

Because of the large number of individuals participating and the gender issues inherent in many child abuse and neglect cases, there are significant advantages to male-female co-mediation teams in which at least one of the mediators is a skilled therapist. This alternative will not always be available or feasible in some jurisdictions, but courts

using such co-mediation teams have found they intervene more creatively and productively and facilitate the evolution of more comprehensive and appropriate agreements. Mediators who speak the same language as family members should be used whenever possible. When such resources are unavailable, interpreters may be used, although this is a less preferred and less effective alternative. Social workers, therapists, probation officers, and attorneys have served as mediators in various courts depending upon the orientation of a particular mediation program. Regardless of the model used, courts should select credible, knowledgeable, experienced, and skilled mediators and provide opportunities for on-going training.

- **Mediation can be helpful in resolving dispositional, post-dispositional, and some jurisdictional issues.**

Dispositional Issues:

Child protection mediation programs typically use mediation to resolve a broad range of dispositional and post-dispositional issues including, but not limited to:

- Identifying the family preservation services required to protect the child's safety in the home;
- Other services to be provided by the agency;
- Willingness of the parents to accept services;
- Arrangements for placement or supervision of the child;
- Frequency and conditions of visitation;
- Modification of placement, visitation, services or court-ordered conditions;
- The potential for family reunification;
- Disputes among professionals about case issues;
- Familial conflicts which are interfering with the case plan or are jeopardizing the safety or best interests of the children;
- The potential for termination of parental rights.

Jurisdictional Issues:

One widely held point of view is that jurisdictional issues are not appropriate for mediation for two major reasons. The first is that determining factual allegations requires legal knowledge beyond the scope of most mediators. The second is that jurisdictional issues should be determined on the basis of fact, not negotiation. This point of view also recognizes that in all pre-trial systems, negotiations affect the wording of the petition and the counts to be included. These concerns are based on the belief that mediators may view agreement as a key indicator of success and may encourage pleas or admissions to lesser allegations or charges which do not reflect the true conditions which need to be corrected. Parents might be encouraged to continue to deny the degree of abuse or neglect which actually occurred. This would make it impossible to hold parents accountable for complying with a case plan based on allegations made in the initial petition but later dropped in subsequent negotiations and never sustained. These concerns arise from the belief and fear that mediators will "deal out" the safety of children in order to get an agreement.

This concern is less justified in mediation programs where there is a clear court policy that mediated agreements are to reflect a full and accurate statement of jurisdictional facts. The experience of most professionals who participate in mediation in such courts supports the appropriateness of mediating some jurisdictional issues as long as the legal representatives for the child, parents, and caseworker are full participants in the process. The concerns previously described are substantially alleviated when it is clear that the court expects factual, jurisdictional findings; when legal advocates for all parties actively participate; and when legal advocates ensure that the interests of their clients are not sacrificed to simply obtain an agreement.

Experience teaches that fact finding can be enhanced when mediators facilitate a free exchange and examination of jurisdictionally-related information by all participants in this less adversarial environment. When mediation focuses on the underlying and real concerns of

the parties and professionals, and when the court expects factual jurisdictional findings, jurisdictional issues can be resolved without sacrificing the integrity of the child's safety, the dignity of the parents, or the social worker's concerns and goals for the family.

• Mediation is appropriate in only a selected number of cases, but when ordered by the court, participation in mediation programs should be mandatory.

While it is often possible to reach agreements through the use of informal conferences or settlement conferences, sometimes, especially in complicated or highly conflicted cases, the involvement of a trained mediator is needed to assist the parties in reaching an appropriate settlement. In some instances, one or more of the parties may request mediation services and the parties can make their own well-considered determination regarding whether mediation would be helpful. In other cases, when one or more of the participants appears recalcitrant or has failed to properly consider the issues in dispute, court encouragement and direction may be needed. Judges should be empowered to require parties to be involved in mediation whenever it appears that mediation might serve a beneficial purpose such as the avoidance of contested proceedings, reduction of case-interfering conflict, and/or development of more appropriate and more comprehensive settlements.

The process of mediation is not intended to impinge upon any criminal proceeding. Certain cases are not appropriate for referral to mediation, such as those involving parties not able to adequately or fully participate, i.e., parties severely mentally ill, developmentally delayed or mentally retarded, or in cases involving serious criminal allegations. The court should also have the discretion to decline to refer a case to mediation if the judge believes mediation in that particular case would not serve the best interests of the child.

It should be noted that judges and commissioners initially reluctant to refer cases to mediation have been consistently surprised and pleased at the results of mediation, as have been the other participants once mediation was ordered.

• Mediation should be confidential.

Information shared by participants during mediation should be confidential and not subject to discovery, with the exception of any new allegations of abuse or neglect which arise and are subject to mandatory child abuse and neglect reporting laws, or any threats of harm to any individual which must be reported in order to protect the safety of those threatened. Even when there is only partial agreement on the issues and a judge must decide the remaining issues, the substance of the mediation should not be open for discussion. When mediation is unsuccessful, the mediators should not testify against any party in court and the results should not be used in court, including whether in the mediator's opinion one party cooperated or failed to cooperate. Such a confidentiality requirement is necessary to encourage frank and open discussion of all relevant issues.

• Mediated agreements should become part of the court record.

The court or mediation program must designate the participant responsible for recording the terms of any agreement reached. In some counties it is the mediator, and in others it is the attorney representing the child protection agency. It is preferable that any partial or complete agreement be signed by all parties and immediately reported to the judge on the record. The judge should carefully review the terms of any submitted agreement and make sure all parties understand and consent to its related terms. This ensures the judge is current on case developments, the nature of the agreement is appropriate in the view of the court, and reminds the parties that the judge remains the ultimate decision-maker in the case. In the event the judge approves the agreement, it should immediately be entered into the record as a court order consistent with court rules. The court should then designate an appropriate individual to prepare the relevant written

findings of fact and conclusions of law for signature and filing.

- **Mediated agreements should be specific and detailed.**

If mediation is to be confidential, it is important that mediation agreements be specific and detailed. Because there is no court record of the substance of mediation discussions, mediated agreements should set forth the specifics of what is expected of the parties and the factual basis for the agreement. If findings of fact and conclusions of law are required in the cases settled through mediation, their terms should be set forth in the agreement.

- **The availability and utilization of community resources is essential.**

Courts must recognize that mediated outcomes will be only as effective as the community resources available to provide needed services to children and families. Judges must work to secure the professional support and resources necessary to make a mediation program successful.

C. Mediation Checklist

Persons who should be present at various stages of the mediation session:

- Mediator(s); preferably one male and one female
- Parents whose rights have not been terminated, including putative fathers
- Relatives with legal standing or other custodial adults
- Assigned caseworker
- Age-appropriate children
- Agency attorney
- Attorney for parents (separate attorneys if conflict warrants)
- Legal advocate for the child and/or GAL/CASA
- Service providers
- Adult or juvenile probation or parole officer

Guidelines for implementing mediation programs:

- Mediation programs should be courtbased or court-supervised and have strong judicial and interdisciplinary support.
- Mediators must be highly trained, experienced and skilled professionals, have credibility with the court and related professionals, and be perceived by family members as being neutral and having the best interests of the child and family at heart.
- Mediation can be helpful in resolving dispositional, post-dispositional, and some jurisdictional issues.
- Mediation is appropriate in only a selected number of cases, but when ordered by the court, participation in mediation programs should be mandatory.
- Mediation should be confidential.
- Mediated agreements should become part of the court record.
- The availability and utilization of community resources is essential.

D. Endnotes

1. See Santa Clara County, Calif., Family Court Services memorandum of 12/31/93, regarding 1993 Annual Report of the Santa Clara County Dependency Mediation Program, and memorandum of 8/19/94, regarding preliminary results of Santa Clara County Dependency Court Mediation Parent Survey (Family Court Services, Santa Clara County Superior Court, 191 N. First St., San Jose, Calif. 95113).

2. Publications by Center for Policy Research in Denver, Colorado. See N. Thoeness, "Mediation and the Dependency Court: The Controversy and Three Courts' Experiences," 29 Family and Conciliation Courts Review 246 (1991); Center for Policy Research, "Alternatives to Adjudication in Child Abuse and Neglect Cases, Final Report of State Justice Institute Project SJI-89-03C-022" (1992); N. Thoeness, Center for Policy Research, "A Step in the Right Direction: Child Protection Mediation in the Juvenile Court," (1993). The use of mediation was approved in minor abuse and neglect cases in the report of a special project of the National Council of Juvenile and Family Court Judges, "Court-Approved Alternative Dispute Resolution: A Better Way to Resolve Minor Delinquency, Status Offense and Abuse/Neglect Cases," (Reno, Nev. National Council of Juvenile and Family Court Judges, 1989).

3. See "Alternatives to Adjudication in Child Abuse and Neglect Cases," Center for Policy Research (1992), which documents mediation programs in the juvenile courts of Los Angeles and Orange Counties, Calif., and by the Family Division of the Connecticut Superior Courts; and field notes of mediation programs in the juvenile courts in Los Angeles and Santa Clara Counties, (Pittsburgh: National Center for Juvenile Justice, 1993).

APPENDIX C

Improving Implementation of the Federal Adoption Assistance and Child Welfare Act of 1980

By Judge Leonard P. Edwards[1]

Introduction

The Adoption Assistance and Child Welfare Act of 1980[2] ("Act") significantly changed child welfare law in the United States. Of particular importance, the Act created responsibilities for juvenile court judges, making them an integral part of the operation of the law. Although the Act has been in effect for well over a decade, it is still misunderstood and often ignored.

This article examines the implementation of the Act and the reasons why it is not working as well as it might. It offers technical assistance to judges, court administrators, social service agencies, attorneys and other interested persons regarding the Act's implementation. It focuses upon the judicial oversight of abused and neglected children when they are removed from parental custody. The premises of this paper are that many social service agencies do not effectively deliver preventive and reunification services to families, that juvenile court oversight of social service delivery has been ineffective or nonexistent, and that many juvenile courts do not ensure that children in out-of-home care attain a permanent home in a timely fashion. As a result, many state child welfare systems do not serve children and families well, and most states risk losing federal funding for social services. This paper concludes with recommendations on how a strong judiciary and specialized training can improve implementation of the Act and ensure that it operates as Congress intended.

Overview

Nowhere else in the law must judges play such an important role as in juvenile dependency cases. The Act and state laws based upon it[3] require the juvenile court judge to monitor the activities of the social service agency before, during and after the state has removed a child from a parent's or guardian's custody.

This monitoring is a significant responsibility for judges. Juvenile court judges are already the gatekeepers for the nation's child welfare system. State law requires them to decide the propriety of social service agency removal of a child from parental custody. The federal statute and state implementing statutes[4] have designated juvenile court judges as the monitors of social service delivery to these same parents. Through child welfare court hearings, the juvenile court must determine whether the social service agency has made "reasonable efforts" to prevent foster care placement or to rehabilitate and safely reunite families of children already in placement.[5]

In these court proceedings, the stakes are high by both human and fiscal measures. Child abuse reports have risen dramatically in the past ten years.[6] The impact upon juvenile courts and the foster care system has been significant.[7] The number of juvenile court dependency cases has increased substantially, and more than 460,000 children are currently in out-of-home care at a cost of hundreds of millions of dollars annually.[8]

Judges are periodically called upon to engage in substantial oversight of agency decision making, but not with the consequences described in the Act. If a judge finds that the state social service agency has not adequately delivered services to a family from whom a child has been removed, that finding may serve as the basis for reducing federal aid to the agency.[9] A negative judicial decision may thus reduce financial support for the agency and make it even more difficult to provide services to families whose children may be or have been removed.

The Act's drafters placed juvenile courts in the crucial position of monitoring social service compliance with its terms. Unfortunately, a number of implementation problems have impaired the effectiveness of judicial oversight. Seven problems stand out: First, many people disagree with the law. At one extreme, some argue that preserving families is dangerous for children and that abusive and neglectful families should not be given an opportunity to change, rehabilitate, and be reunited with their children.[10] At the other extreme, people claim that the state is too intrusive into family life, that fewer children should be removed from parental custody, and that, once removed, children should not be adopted, but should wait until their parents are ready to have them returned.[11]

Second, some social service agencies have not delivered the services as promised in their state plans.[12] Third, some judges misunderstand or remain unaware of their duty to monitor social service delivery. Fourth, in many courts the "reasonable efforts" issue is not litigated by the parties. With no one raising the issue, courts understandably do not address it. Fifth, some judges understand their responsibility but are unwilling to exercise their power and rule on social service failures.[13] Sixth, some judges understand their responsibility and are willing to exercise their power, but they record their findings incorrectly. Seventh, in many jurisdictions court structure impedes implementation of the Act.[14] Often a state's constitution or state laws create barriers to implementation.[15]

The Act can and must be better implemented. The first of the following four sections examines the federal law, its purpose and what it requires of juvenile court judges. The second section reviews the Act's implementation, examines recent trial and appellate decisions, and provides information on judicial training and trial court practice. The third section suggests ways in which implementation can be improved and features techniques proven effective in several jurisdictions. The fourth section outlines some specific steps jurisdictions should take to improve compliance with the Act and thereby better serve children and families. It describes the juvenile court judge's critical role in implementing the Act and in overseeing the entire juvenile dependency process; it also describes the juvenile court judge's relationship to the social service agency and the art of the "reasonable efforts" finding.

I. The Act

The Adoption Assistance and Child Welfare Act of 1980[16] governs juvenile dependency law in the United States. Enacted in response to widespread criticisms of the country's child welfare system, this federal legislation balances the need to protect children with the policy of preserving families. After lengthy hearings, Congress concluded that abused and neglected children too often were unnecessarily removed from their parents,[17] that insufficient resources were devoted to preserving and reuniting families,[18] and that children not able to return to their parents often drifted[19] in foster care without a permanent home.[20] Congress concluded that children need permanent homes, preferably with their own parents, but, if that is not possible within a reasonable time, with another permanent family.[21] Permanent families provide children better care than the state and help ensure that they will grow into emotionally stable, productive adults.[22]

Congress's response, the Adoption Assistance and Child Welfare Act of 1980, was based upon three important principles:

(1) preventing unnecessary foster care placements;
(2) timely and safe reunification of children in foster care with their biological parents when possible; and
(3) expeditious adoption of children unable to return home. The Act seeks to achieve these goals, in part, by providing state social service systems with "incentives to encourage a more active and systematic monitoring of children in the foster care system."[23]

The major tenets of the Act and of the state implementing legislation are as follows:

1. To qualify for federal funding, the state must prepare a state plan describing the services it will provide to prevent children's removal from parental custody and to reunite child and parents after removal.[24] The plan must include a provision that the social service agency will make foster care maintenance payments in accordance with section 472 of the Act.
2. The social service agency must provide services to prevent removal of a child from parental custody and to reunite a removed child with a parent or guardian.[25]
3. Where a child is involuntarily removed from parental custody, the juvenile court must make a finding that continued placement of a child with the parent or guardian would be contrary to the child's welfare.[26]
4. The juvenile court must make "reasonable efforts" findings in each removal case, indicating whether the state, in fact, provided services to eliminate the need for removing the child from the parent.[27]
5. The juvenile court must also determine whether the state has made "reasonable efforts" to enable the child to be reunited with his family.[28]
6. The juvenile court must determine whether the agency developed a case plan to ensure the child's placement in the least restrictive, most family-like setting available in close proximity to the parent's home, consistent with the best interests and needs of the child.[29]
7. The juvenile court or administrative review board must review a foster child's status at least once every six months. At each review the court or administrative body must determine the continuing need for and appropriateness of placement, the extent of compliance with the case plan, and the progress which has been made toward alleviating or mitigating the causes necessitating placement in foster care. The court or administrative body must also project a likely date by which the child may be returned home or placed for adoption or legal guardianship.[30]
8. The juvenile court must hold a hearing no later than 18 months after the original out-of-home placement to determine a permanent plan for the child. The court must determine whether the child should be returned to the parent, should continue in foster care, should be placed for adoption, or should (because of the child's special needs or circumstances) be continued in foster care on a permanent or long term basis.[31]
9. The juvenile court must also assure that these judicial determinations are made in a timely fashion. The involuntary removal of a child must be reviewed, usually within 48 or 72 hours. Thereafter, the status of the child must be reviewed at least every six months. The child must be returned home or have a permanent plan (adoption, guardianship or long term care) in place within 18 months of the removal.[32]
10. The juvenile court must approve any voluntary, non-judicial foster placement within 180 days of the original placement.[33]
11. The juvenile court must ensure that parents are provided procedural safeguards when their children are removed from the home or are moved into different foster homes.[34]

Congress intended the Act to ensure that social service agencies fulfill promises made in their state plans. The juvenile and family courts in each jurisdiction were given the task of reviewing the delivery of social services both before and after removal of a child for abuse or neglect. Congress made a deliberate decision to give the

courts substantial oversight responsibility.

> *The committee feels the elimination of the requirement for judicial determinations would be directly contrary to the purposes of the legislation in that it would move in the direction of providing additional incentives for States to choose foster care placements over the more difficult task of returning children to their own homes or placing them in adoptive homes. Moreover, such a change would eliminate an important safeguard against inappropriate agency action.*[35]

The federal government's role under the Act is to ensure compliance by auditing court records. Where the social service agency complies with the Act and the court records compliance with the correct findings and orders, the federal government will not penalize the state by demanding that federal funding be returned. If, however, the court records do not reflect compliance with the federal law, the state will be required to return some of the federal monies that have been provided.[36]

II. Implementation of the Act

Implementation of the Act has been uneven.[37] The legislation is complex and is effective only when it is fully understood by each participant. First, the state social service agency must submit a plan to the federal government, a plan which is the basis for receipt of federal monies to support foster care and other services for abused and neglected children and their families.[38] The state plan details the social services which will be offered to families to prevent removal of their children and to promote reunifying of families when children have been removed.

Second, the social service agency must provide prevention and reunification services to these children and families.

Third, the court must determine at the hearing whether the services offered were appropriate under the circumstances. The term of art used in these hearings is "reasonable efforts." If the court determines that the services offered were adequate, it will make a "reasonable efforts" finding. If the court determines that the services offered were inadequate, it will make a "no reasonable efforts" finding.

The possible findings are actually more complex. The court may find that no reasonable efforts were offered, but may also conclude that because of an emergency, no social services would have prevented removal of the child. In this case, the court may make such an emergency finding to satisfy the requirement of the federal Act.[39]

Fourth, the court's findings must be properly recorded so an auditor can understand them. If the judge or court clerk incorrectly records the judicial findings concerning these issues, the social service agency may not receive credit for satisfactory work or may get credit for improperly performed work. To make matters even more complex, the Act does not define "reasonable efforts."[40] The term must be interpreted by each judicial officer in each case. Some services may be "reasonable" in one jurisdiction but not in another. For example, one community may be able to provide a home for a teenage mother and her baby, while such a resource may be unavailable in another. In the latter community, the court may find that failure to offer that service is reasonable given the resources available to the social service agency.[41]

It is difficult to monitor the Act's implementation to determine how well juvenile and family courts follow it. One source of information comes from commentators who have studied the child welfare system. They indicate that compliance with the law is uneven and in some jurisdictions nonexistent. One commentator finds "impressive gains occasioned by court-related provisions of the Act."[42] He comments that periodic court review has made it more difficult for social workers to leave a child in care without supervision or efforts towards permanency. He believes the Act has helped avoid unnecessary placement of many children, has reduced the frequency of inappropriately lengthy placements, and has led to more terminations of parental rights and adoptions of children who cannot return to their parents. He also observes that courts and social services agencies

are working together more closely as a result of the Act.[43]

However, this same commentator concludes that "fully effective implementation has not occurred in many parts of the United States."[44] In some jurisdictions compliance with the Act is minimal:

In many densely populated, high poverty urban areas, the child welfare system operates very much in the same manner as it did prior to the passage of P.L. 96-272.[45]

Many of these jurisdictions are frustrated by limited resources throughout the dependency system, including insufficient numbers of social workers. As a result, cases are poorly investigated, inadequate services are provided to the family to prevent removal, case plans are not written in a timely fashion, and reunification services are inadequate and untimely when children are removed. Because of insufficient resources, attorneys and guardians ad litem are overburdened with enormous caseloads, court calendars are crowded, cases are given only a few moments each in court, and the entire process is slow and cumbersome, with permanency planning hearings[46] occurring three, four, and five years after initial removal of a child.[47]

Moreover, a lack of understanding concerning the operation of the Act has severely limited its implementation. For example, many incorrectly believe that a finding of "no reasonable efforts" prevents the court from removing a child from a dangerous home.[48] Several states have even enacted legislation requiring a finding of reasonable efforts before removing a child.[49] These interpretations of the federal Act are incorrect. The only consequence the Act provides for failing to provide adequate services is loss of federal matching funds.[50]

Several commentators have addressed these issues, some with a measure of despair.[51] A federal judge hearing evidence about the child welfare system in the District of Columbia, including insufficient numbers of social workers, poor services, and inadequate automation, concluded:

The court views the evidence in this case as nothing less than outrageous. The District's dereliction of its responsibilities to the children in its custody is a travesty. Although these children have committed no wrong, they in effect have been punished as though they had. Based upon the foregoing, the court holds that defendants have deprived the children in the District's foster care of their constitutionally protected liberty interests.[52]

An appellate court in Illinois, reviewing the child welfare system in Cook County (Chicago) with similar problems, stated that the dependency and juvenile court systems were "abysmal failures partly because the juvenile court has not followed the law."[53]

An attorney representing children in dependency actions in Pittsburgh, Pa. wrote of her inability to meet the demands of increasing caseloads:

This afternoon I am in the midst of a paper mountain, trying to acquire information about the 120 plus children I will represent in over 55 hearings this Friday before my county's Juvenile Court. I have been a lawyer with Child Advocacy for over ten years, have seen caseloads triple and funding decrease, so that my four full-time colleagues and myself have responsibility for more than 1100 cases each.[54]

Despite these problems, the juvenile court dependency process works well in some jurisdictions. Child abuse and neglect are reported and thoroughly investigated. Family preservation services[55] prevent unnecessary removal of children. When formal proceedings are initiated, the parties are well represented by attorneys and/or guardians ad litem who have reasonable caseloads. If a child must be removed from parental custody, reunification services are provided which give the parents a meaningful opportunity to reunite with their child. If, after 12 or 18 months, reunification is unsuccessful, a permanent plan is established and implemented in a timely fashion.

Examples include Hamilton County, Ohio;[56] Sonoma County, California; Jefferson County, Kentucky;[57] Santa Clara County, California;[58] and Kent County, Michigan.[59] In the face of rising caseloads and the mandates of the federal Act, these counties and others

like them throughout the country give a clear indication that compliance with the federal law is possible.

A second source of information about compliance with the federal Act is appellate case law, both federal and state. This law is divided between decisions which review juvenile court findings in individual cases and those which review issues covering an entire jurisdiction. Findings of reasonable efforts are reviewable by appellate courts. These appellate decisions demonstrate that in some states reasonable efforts issues are thoroughly litigated, but the fact that the issues do not appear in the appellate decisions in other states may indicate that they are not addressed in the juvenile courts.[60]

For example, a Pennsylvania decision found that the social service agency had not provided reasonable efforts to an unwed teenage mother and her 14-month-old infant after the mother had come to the agency for help because she had no money or place to stay. The baby was removed, and the agency told the mother "to get herself together and find a place and get some employment so she could have her daughter back." Even after she had done what was requested, the agency did not return the baby to the mother's new home without visiting it.[61]

The Supreme Court of Rhode Island reviewed two cases in which the trial court had ordered the Department for Children and Their Families (DCF) to provide housing assistance to homeless families to assist parents in reuniting with their children.[62] DCF opposed these orders, claiming that the court did not have authority to order housing in juvenile dependency matters and that such expenditures would unduly tax the agency's limited resources.

The Supreme Court affirmed the trial court findings. It focused upon the statutory language empowering DCF and concluded that housing subsidies were consistent with the purpose of reunification services:

> *The rental-subsidy payments are a stopgap measure designed to enable a reunifying family with no savings and little or no income to raise the security deposit and the first few months' rent needed to secure new housing. The housing assistance is not to be continued indefinitely.*[63]

The court concluded that the trial court acted consistently with the intent of the legislature.

> *The Legislature intended for the court to provide a check on DCF's powers, to protect families from hasty and routine terminations by ensuring that adequate services have been provided prior to termination. Without the power to remedy inadequacies, this check would be illusory.*[64]

In a Missouri case, the social service agency removed four children from their mother's custody when it was discovered that she had left them at home unattended and unsupervised.[65] Apparently this had happened on more than one occasion. Moreover, the mother had on several occasions left her children with relatives, babysitters or her boyfriend and failed to return to pick them up. There was also evidence that the mother was an habitual drug user, that she agreed to participate in a three month drug-counseling session, but that she failed to participate in that session.

The juvenile court assumed jurisdiction over all the children and placed them with their father, giving the mother visitation rights. The Court of Appeals agreed that the juvenile court properly took jurisdiction of the children, but found that the agency had not provided "reasonable efforts" to prevent or eliminate the need for removing the children from their home. The court reviewed the state statute concerning the removal of children and the necessity of proof that the agency had provided reasonable efforts and that the court specifically review those efforts in its orders. The court concluded that:

> *The order of disposition entered in each case lacks both the determination of whether or not the Division of Family Services made reasonable efforts to avoid the need to remove each child from the home, what reasonable efforts were, and a detail of the evidence to explain those efforts.*[66]

The Iowa Court of Appeals reversed the juvenile court finding of reasonable efforts after placing into a group home a 12-year-old child who had committed an aggravated assault. The appellate court found no evidence that the agency had made any attempt to "prevent or eliminate the need for removal of the child from the child's home."[67]

In *In re Burns*,[68] the Supreme Court of Delaware declared how important application of the Act is to the trial courts. The Division of Child Protective Services and Children's Bureau had sought to terminate the mother's parental rights, alleging that she was unable to plan, and had failed to plan, for her child's physical needs. The Supreme Court reversed the trial court's order terminating mother's parental rights. It noted that the social service agency had failed to give her adequate notice. The Court went on to declare the importance of trial courts following the mandates of the federal Act.

> *In future cases of this type the Family Court must ensure meaningful compliance with the Child Welfare Act of 1980 . . . and the appropriate Delaware law. . . In doing so, the Family Court must interpret and apply the federal and state statutes to determine their application to a given case. Thus, where termination of parental rights is sought primarily on the ground that a parent has failed, or was unable, to plan adequately for a child's needs, and if that rather vague criterion is to survive constitutional scrutiny, the trial court is required to make appropriate findings of fact and conclusion of law as to the state's bona fide efforts to meet its own obligations. Without that, no case of this sort, and all its enormous consequences, will pass appellate muster.*[69]

In a number of other states, reasonable efforts findings have been reviewed by appellate courts.[70]

Other litigation has examined the dependency system within an entire jurisdiction. So-called impact litigation is normally brought on behalf of a class of persons, alleging that the entire class is being denied specified rights.

The class action of *Doe v. King* was brought in state court on behalf of abused and neglected children in Massachusetts, alleging that the state was not adequately protecting these children. In August of 1984 the plaintiffs reached a settlement agreement with the Massachusetts Department of Social Services (DSS) which provided for (1) workload controls and minimum staffing patterns at DSS; (2) training of social workers; (3) foster parent training; (4) health screening and a health care tracking system for children in foster care; (5) best efforts by DSS to monitor the health care of children on their caseload who were not in foster care; (6) timely case reviews and reasonable efforts to reunite families, and (7) monitoring of service providers.[71]

In *Martin A. v. Gross*,[72] several families sued New York City's child welfare agency, which allegedly had not provided preventive services to avoid having their children placed in foster care. Such services included day care, homemaker services, parent training, transportation aid, clinic services, access to emergency shelter, cash and goods, all of which the state guaranteed by statute. The trial court granted the plaintiff's motion on the ground that the City's preliminary injunction failure to provide preventive services violated state and federal law. This decision was affirmed by the appellate court.[73]

LaShawn v. Dixon,[74] brought on behalf of children in the District of Columbia against the District government, alleged that children and families were not receiving social services guaranteed by law. The Federal District Court reviewed the entire District of Columbia dependency system and found it to be a dismal failure. The judge's findings indicated that the juvenile court was not making any meaningful inquiry into services provided by the District's social service agency.[75]

In Illinois, the case of *In re Ashley K* began as an appeal of a visitation order in a dependency case, but ended as a full examination of the Cook County juvenile court dependency system.[76] The appellate court found the entire system to be failing. Included in its findings was the fact that thousands of children

were awaiting permanency planning hearings years after they should have been scheduled by law.[77] As in the District of Columbia, it was clear that the juvenile court simply failed to engage in any meaningful examination of the services provided by the social service agency to the families whose children had been removed.[78]

The effectiveness of impact litigation has been seriously limited by the United States Supreme Court decision in *Suter v. Artist M,*[79] which held that private persons may not enforce the Act's "reasonable efforts" provision either under the Act itself or under 42 U.S.C. section 1983. Thus the children and families in *Suter* who sued the social service agency for its failure to provide caseworkers to children in a timely manner were without a remedy except those specified in the Act, such as the federal audits described *infra*.[80]

A third source of information concerning the Act's implementation is the federal government. The Act requires an examination or audit of court records to determine whether the court is properly monitoring and recording its findings regarding social service delivery. These audits are conducted by the Office of Inspector General (OIG) and the Administration for Children and Families (ACF), both divisions of the Department of Health and Human Services. The OIG and the ACF conduct audits in various states on a regular basis.[81] Each audit reviews a representative number of cases from the particular jurisdiction for the audit period. The percentage of failures is measured against the total amount of federal monies provided to the state. The results of the audit are then presented to the state department of social services. For any failures by the state to follow the federal law, the federal government will request reimbursement of the Title IV-E monies.[82]

The audits have examined a number of issues, including the following:

1. Whether the juvenile court has made reasonable efforts findings.
2. Whether the court has made the "contrary to the welfare of the child" findings.
3. Whether the court has signed the orders making the necessary findings.
4. Whether there are case plans for each child.
5. Whether the state provides that every child in foster care receives periodic hearings.[83]
6. Whether permanent plans have been put in place in a timely fashion.[84]

These audits indicate that states often are not in compliance with the federal law. Department of Health and Human Services records indicate that numerous states have been audited and some have been penalized for failing to make the required federal findings. For example, the 1987 audit of Georgia's Title IV-E foster care expenditures resulted in a penalty of $2,586,779.[85] The 1984-1985 audit of Erie and Westchester counties in New York resulted in a penalty of $1,817,346. After negotiations with the State of New York, the final penalty was set at $1,573,013.[86] The federal audit of the State of Washington's Title IV-E foster care payments resulted in a penalty of $229,547.[87] In a 1993 audit of California's child welfare system, the Office of Inspector General reviewed Title IV-E Foster Care Eligibility from October 1, 1988, to September 30, 1991.[88] The draft report revealed a lack of compliance with federal regulations in 319 out of 805 cases. The majority of errors related to lack of judicial determinations regarding "reasonable efforts" and "continuance in the home was contrary to the welfare of the child."[89] The state liability in the draft report exceeded $54,000,000.[90] California's child welfare system has experienced similar problems in the past.[91] Other audits have produced similar penalties for states throughout the country.[92]

Audits also examine whether states have properly reviewed the status of children in placement as the Act requires.[93] An audit of the State of Illinois by the Administration for Children, Youth and Families for fiscal year 1984 determined that the state was ineligible to receive $1,034,619. The audit determined that Illinois had not made timely

reviews of children in foster placement. This determination was affirmed by the Departmental Appeals Board,[94] but reversed in a later Departmental Appeals Board ruling.[95]

III. Improving Implementation

Much room for improvement exists in the Act's implementation. Many state and local social service agencies do not provide families with the services guaranteed in their state plans. They neither provide preventive nor reunification services to families, nor do they ensure that children have permanent placements in a timely fashion.[96] Some juvenile courts do not review the delivery of social services or make appropriate findings regarding those services.[97] Many judges do not understand the Act or its purposes, requirements or consequences.

The stakes are high. Children may be unnecessarily removed from their families and may remain in substitute care for years. Families may be unnecessarily separated. Children who cannot return home may never have a permanent placement. In addition, social service agencies may lose valuable resources through the federal audit process.

All participants in the dependency process, particularly judges, need to be better trained about the Act. This is not as simple as it may sound. The federal Act has no training provisions. It was assumed that courts and social service agencies would learn and understand their responsibilities and how to fulfill them.

The legislation was passed more than 15 years ago, but it is still not well known in many jurisdictions. Training has been sporadic and has been provided primarily by the National Council of Juvenile and Family Court Judges, a judicial membership organization which offers education and technical assistance to jurisdictions which request it. Since 1980, the National Council, through its educational programs and Permanency Planning for Children Project, has provided many trainings both at its headquarters in Reno, Nevada, and throughout the country at national, state, regional and local conferences.[98]

Conference training has its drawbacks. Only a portion of judges come to such conferences. Conference attendance, moreover, does not guarantee that those present will take advantage of the Act's training. Often several workshop choices are offered simultaneously. Many judges choose not to attend such training because juvenile court cases are a small part of their dockets. Particularly where judges hear the entire range of cases in the court's jurisdiction, juvenile court matters may constitute a small percentage of the court's total workload. These judges usually do not devote significant portions of their continuing education time to juvenile court issues.

Even if a judge attends the session, much must be learned. The training usually can provide only an overview of the law and suggestions on how to implement it in a particular jurisdiction. There is not enough time to develop the expertise necessary to enter appropriate court orders so that they will pass federal scrutiny. Adequate training should include a review of the Act, its impact on children and families, the correct manner for recording the required findings and the Act's mandates concerning the judge's role.

Such training should take place in each local jurisdiction. It should include the judges, courtroom clerks, social service representatives, and any other member of the court staff involved in recording court findings. The training should also include attorneys, guardians ad litem, Court Appointed Special Advocates (CASAs)[99] and social workers. The training can focus on the Act and its implementation in the jurisdiction. All members of the dependency system can address issues such as representation of the parties, court calendaring practices, local policies and procedures, and judicial forms. Technical assistance is available for such trainings from the National Council of Juvenile and Family Court Judges and the judges and staff they have available for training. An example of the technical assistance available are the model forms developed for use in dependency cases by Judge Richard FitzGerald of Louisville, Kentucky, and by the Northern California Bay Area Reasonable Ef-

forts Project.[100]

Recent federal legislation offers both state social service agencies and court systems the opportunity to improve implementation of the Act.[101] The Family Preservation and Support Services part of the Omnibus Budget Reconciliation Act of 1993 provides that each state will receive monies "to promote family strength and stability, enhance parental functioning and protect children."[102] One of the goals of this legislation is to enable states to assess and make changes in state and local social service delivery. The total amount of money authorized is approximately one billion dollars over five years.

In addition, Congress has authorized the U.S. Department of Health and Human Services to provide $35 million in grants to state courts over a four year period.[103] The grant program's purpose is to help state juvenile court systems assess and improve their handling of child abuse and neglect, foster care and adoption cases. During the first year of the grant program, the state will complete an assessment describing its performance and a plan for improvement.[104] By taking advantage of this grant program, states can assess their juvenile court dependency systems and take steps to improve them.[105]

California is currently experimenting with a training model designed to address deficiencies in the federal Act's implementation. The State Department of Social Services has agreed to include funding for judicial training in its budget. Leaders from the judiciary and social services agencies will hire and train several persons to serve as local experts in implementing the Act. These persons will work under the auspices of the California Judicial Council. They will visit every judicial officer in the state who hears juvenile dependency cases to conduct an on-site training session regarding the Act. The training will include the courtroom clerk, the court officer from the social service agency, and anyone else critical to the implementation of the law. The trainers will explain the federal Act, its philosophy and main provisions, the necessity for judicial oversight of social service delivery, and the ways in which court orders must be recorded. There will be an opportunity to offer technical assistance to the court and staff concerning all aspects of the Act's implementation. To overcome possible reluctance from judges to participate, the Judicial Council will introduce and promote this training. If necessary, other judges will accompany the trainers. A unique aspect of this training is that it will be financed principally by federal funding provided under federal regulations which permit state and local training for foster care and adoption assistance under Title IV-E.[106]

Such training will also be extended to attorneys and all others who appear on behalf of children, parents, and the social service agency. Attorneys who appear in these proceedings must understand the Act and address the issues on which the court must make findings pursuant to it. Court Appointed Special Advocates (CASAs) and guardians ad litem also must be trained in the law so they can assist the court by commenting on those issues in their court reports.

Correct implementation of the Act is vitally important to all participants in dependency cases. If the court fails to make or incorrectly records the required findings, the social service agency could lose valuable resources and children and families may suffer unnecessarily lengthy or needless separations. One means to provide education for all members of the legal and social service community is to have a local or statewide conference devoted to fully implementing the Act. California has developed a useful model with its annual Beyond the Bench Conference. Co-sponsored by the Juvenile Court Judges of California, the State Department of Social Services, and the County Welfare Directors, this conference brings together all major participants in the dependency process for two days each year. Participants help plan the conference agenda so that issues are examined on an interdisciplinary basis. The National Council of Juvenile and Family Court Judges has participated in each conference, bringing both technical assistance and nationally known speakers to enrich the proceedings. The result has been an improved child welfare system in which the par-

ticipants have a better working relationship with one another,[107] a more complete appreciation of the federal law, and an understanding of each participant's role.[108]

In order to implement the federal law effectively, some states may have to modify their juvenile court statutes. Their new statutory scheme should reflect the federal law's philosophy, timelines, and mandates concerning service delivery and judicial findings. Several state statutory schemes, including those in Ohio, Minnesota, Missouri, and California, offer models for consideration.[109]

Hopefully, adoption of some of these innovations will persuade judges and administrators to renew their determination to adhere to the Act's mandates. For many judges and court systems, however, adherence has not been the rule. One unfortunate response to the Act has been for some judges to "rubber stamp" reasonable efforts on all cases without any meaningful inquiry.[110] Some of these judges say that they will not make a "no reasonable efforts" finding if that finding will result in loss of revenue to their jurisdiction. They understand the Act, but refuse to exercise their power even if the social service agency has not delivered the required services. Other judges are prepared to check the box or sign the preprinted form without any inquiry.

Not only is this rubber-stamping a violation of the law, but it also makes the Act meaningless. The Act instructs juvenile court judges to make specified findings based upon evidence presented in court. By failing to take the Act seriously and exercise scrutiny over the social service delivery process, the judge abrogates judicial responsibility. The judge becomes part of the problem and becomes useless for the purposes of the law.

Moreover, these judges create an even greater problem. *Ashley* and *LaShawn* indicate what can happen when the juvenile court remains silent or fails to do its job. It can result in a lack of accountability by the social service system and wholesale government neglect of children. By sitting by silently while the social service agency fails to do the tasks mandated by the Act, the juvenile court participates in the systematic neglect of children and families.

IV. The Juvenile Court Judge's Role

Effective implementation of the Act requires strong leadership from the juvenile court. It is necessary to have a state statutory scheme consistent with the Act[111] and a social service system with sufficient resources to provide services to troubled families, but it is crucial to have leadership from the juvenile court bench. This leadership must extend to court organization, judicial resources, training, and education.

The juvenile court must be organized to give dependency cases sufficient status and resources.[112] These cases should be managed by judges, not lesser judicial officers.[113] Judges hearing these cases should be interested in the juvenile court's work and be prepared to remain in the court for at least three years.[114]

Judicial rotation of judges hearing juvenile dependency cases, or the movement of a case among several judges, is good neither for children and families before the court nor for the Act's implementation.[115] Preferably one judicial officer will hear a child welfare case from start to finish. When more than one judge hears a case, each successive judge must go back to the beginning to understand the case's procedural and factual history. Having multiple judges hear a case increases the possibility that facts will be forgotten. It reduces accountability. It can turn judicial review into an exercise of paper movement and can result in poor judicial decisions concerning placement of children.[116]

In courts with four or more juvenile court judges, it is preferable to divide the work into teams, one focusing upon juvenile delinquency and one on juvenile dependency. This division of labor results in better calendar management, more and better judicial oversight of cases, and greater efficiency for the attorneys, probation officers and social workers who work with the juvenile court.[117]

Juvenile court judges must ensure that the court has adequate judicial and other resources to fulfill its responsibilities.[118] The judges must be prepared to advocate for sufficient judicial officers and staff to be assigned to the juvenile

court. This challenge may involve substantial political effort by the judges, but the risks of failing to take action are significant. Children and families are not well served by understaffed juvenile courts.[119] Moreover, the quality of the juvenile court's work will likely become the focus of public inquiry and criticism if the deficiencies persist.[120]

Judges must also ensure competent representation for parents and children who appear in dependency proceedings.[121] It is particularly important that children have consistent independent representation throughout their dependency. In that way someone will be able to retain the child's history, including the reasons for entry into the system. In addition, judges should establish standards for attorneys and guardians ad litem which require them to participate in training on a continuing basis.[122] Courts and social service systems need adequate resources to function adequately, but that is not all. Each must be operated intelligently. For example, intake policies and practices, the ways services are delivered to families, the timeliness of hearings, and the ways cases are closed are all crucial to a well run juvenile dependency system.

Intake policies determine what quality of case will be petitioned and come before the juvenile court. Jurisdictions vary widely in the ways they decide whether to remove children from their parents, in their ability to deliver preventive services and thereby avoid removal, and in their willingness to provide services on a voluntary or informal basis. The same factual circumstances may result in removal and formal court intervention in one jurisdiction and no removal with in-home services in another.[123] States should consider developing guidelines relating to the factors justifying removal of children from their parents as well as reunification. Connecticut has written standards for the removal and return of children. To be useful, such guidelines must be accompanied by training and review.[124]

A useful method of improving implementation is to examine carefully specific types of cases to determine whether specialized strategies can safely prevent removal of children from their parents. One example is the drug-exposed baby. Estimates are that approximately 740,000 women will use one or more illegal substances during their pregnancies each year.[125] Such exposure can have a deleterious effect upon the fetus. If detected at birth, there may be a report to child protective services, investigation, and, in some cases, removal of the baby and juvenile court intervention.

Research focusing upon court cases of drug-exposed infants has identified policy and service delivery changes which can maximize assistance to mothers.[126] Model protocols have been developed to provide services to these babies and their mothers and enable many of them to remain safely together.[127] The California Legislature enacted legislation mandating the creation of such protocols[128] and prohibiting the mandatory reporting to law enforcement and child protective services that a baby was born substance-exposed.[129] When properly implemented, such protocols can result in a dramatically lower rate of referrals to juvenile court with excellent outcomes for the babies and the mothers.[130] Jurisdictions with policies for automatic removal of drug-exposed babies from their mothers should examine the successes of these model procedures. Similar strategies can be developed for other categories of cases, including physically abused children, children whose parents are incarcerated,[131] and sexually abused children. By focusing on the special factors present in each type of case, decision makers can develop guidelines, risk assessment instruments, and services which will maximize the possibility that a child can be safely maintained with the family.

The ways by which cases are closed and thus removed from the system are often ignored as a method of controlling caseloads for the child welfare system. Judges, social workers, and attorneys must continually ask whether it is necessary for a particular case to remain within the system. If the child has a safe and protective parent, the court should fashion orders which protect the child in the parent's custody and dismiss the case.[132]

Often, reaching the permanent plan of guardianship or adoption permits the

court to dismiss the case, but delays in reaching the permanent plan can unnecessarily keep these cases in the system for years.[133] These delays are both harmful to children and costly for an already under-resourced child welfare system. The law has carefully set out timelines for permanency planning. Legal and mental health experts concur on the importance of reaching permanency. Often, however, social workers feel no necessity to work on cases in which the child is in a stable home. Other cases await with more pressing issues. Permanency planning can wait. A significant barrier to permanency is the reluctance to try to adopt children in placement.[134] Many believe teens, minority, and other special needs children are unadoptable.[135] Others are ambivalent about terminating parental rights and moving to adoption, believing that parents should be given an indefinite time to reunify with their children. Some social workers, attorneys, and judges will not take the steps necessary to complete the adoption process. In addition, many decision makers refuse to proceed with termination of parental rights unless there is a family identified for the adoption.[136] This reluctance stems from their belief that a child is not "adoptable" unless the adopting family has been identified and their unwillingness to place a child in legal limbo without parents. This practice actually reduces the possibility of adoption. First, most experts agree that a child's adoptability is not dependent on the identification of the adoptive family.[137] Second, many families will not consider a child who is still in the legal system. With so many highly publicized stories about adoptive families having to give up their child because of parental rights which had not been legally terminated, these families understandably want their child to be free from the legal system before they initiate adoptive proceedings.

It is up to judges to ensure that children reach permanency. Judges should have a complete list of all children over whom the court has jurisdiction. The list should include the status of each case and how long it has been in the system. Cases in which guardianships or termination of parental rights have been ordered should be regularly reviewed by the judge who made the order. Social workers and attorneys who have been ordered to carry out the order should be prepared to report to the court the status of the plan. If the judge emphasizes the importance of these cases, they will reach conclusion and be dismissed from the system.

Assuming that there is an adequately staffed and organized juvenile court with dedicated judges who have both an interest in and long-term commitment to the work of the court, still more is necessary. Judges must understand and be prepared to follow all laws pertaining to removal and placement of abused and neglected children, delivery of social services, and timeliness of hearings. Oversight of social service delivery presents unique challenges. The judge is asked to determine whether, under the circumstances of each case, the social service agency has delivered reasonable services to the family. The determination requires the judge to know some or all of the following factors:

1. What services are available in the community?
2. How quickly can the families use the services?
3. Are family preservation services available to all families which come in contact with the social service agency? To some families? To this family?
4. How often and under what conditions do children visit their parents after the court has removed them?
5. Has the social service agency taken advantage of other service providers in the community which could help families entering the child welfare system? Examples of such service providers include mental health counseling, drug and alcohol treat ment, housing, domestic violence counseling, health care, recreation, day care, and parenting classes by private and public agencies.[138]

Ensuring that hearings take place in a timely fashion presents the juvenile court judge with a formidable task. The

legal process seems to be synonymous with delay. Reports indicate that children can take from five to ten years to reach a permanent plan which by law should be completed within 18 months.[139] Missing parties or attorneys, incomplete reports, insufficient notice to parties, and crowded calendars combine to make it likely that a court proceeding will not be prepared to proceed within the statutory time frame. It is up to the judge to provide leadership by impressing upon all parties the importance of hearing cases expeditiously.

The juvenile courts also must develop and adhere to firm time standards for deciding cases. In some cases, parental rights can be terminated shortly after the initial determination. In some cases, adoption proceedings should proceed promptly. In other cases, permanency plans must be developed, and the Court should monitor D.C.F.S.'s progress with the family over a period of time. In some cases, courts will need to extend deadlines because of the facts of the particular case. But in every case, the Court must assure that progress is being made and the need for quick action . . . the "child's sense of time" . . . is respected.[140]

The Juvenile Court Judge's Relationship to the Social Service Agency

Both the juvenile court and the social service agency have crucial roles in the child welfare system. Social services is the designated community agency for delivering preventive and supportive services to families in crisis. The juvenile court provides the legal framework for state intervention into family life. The Act further defines the relationship between the social service agency and the juvenile court. As has been noted earlier, the juvenile court must oversee delivery of social services to a family before and after a child has been removed. Sanctions for a failure to provide adequate services include the loss of federal dollars.

In this unique relationship, both the juvenile court and the social service agency have the same goal: to produce positive outcomes for children and families. Both strive to protect children and preserve families. Nevertheless, a tension exists between the two.[141] The Act calls upon the court to oversee the agency, to make orders relating to placement and care of the child, and in many circumstances to direct what the agency should do. This oversight takes place within a legal environment, one which the agency frequently finds foreign and hostile.[142]

The agency often must defend its actions in court. Its social workers are cross-examined by attorneys, its judgment is challenged, and the court may make orders which the agency finds unreasonable, unfounded and impractical. Most of all, the agency finds itself in an adversarial process, one which seems ill-suited to the goals of child protection and family preservation.

Juvenile court judges have also found the relationship difficult and unsatisfactory. Judges complain that juvenile dependency work is little more than social work with a legal gloss. Reviewing the delivery of social services is an untraditional, complex task that many judges have not been interested in learning. When social service agency staff reveal their displeasure with court oversight and the adversarial process, it does not make the tasks facing the judge any more attractive.[143]

The social service agency and the juvenile court, however, cannot do without one another. Our society will not permit the agency to remove children temporarily or permanently without some oversight. Parents and children need to have the opportunity to question state action which violates family integrity, and the court seems a logical choice for that oversight. Moreover, child protective services and social service agencies need the power and prestige of the courts when making decisions concerning the removal and return of abused and neglected children.[144] When there are allegations of "child snatching"[145] or unwisely returning children to abusive parents,[146] it is critical that the agency be able to point out that each of its decisions to remove or return a child has been approved by a judge.

The challenge seems to be to develop a better working relationship between social services and the courts. To that end, reference to jurisdictions which have smoothly working child welfare systems may be helpful.[147]

The principal attributes of a successful dependency system appear to include an adequately resourced social service system which can deliver services immediately to families in crisis, and a responsive court system prepared to ensure that a child removed from parental care reaches permanency without unnecessary delay. An examination of two model jurisdictions, Sonoma County, California, and Kent County, Michigan, reveals both of these attributes.

A suburban county with approximately 420,000 people, Sonoma has consistently led California in the number of abuse and neglect cases safely resolved without removing the child from parental care. In 1993, 101 new families were brought under juvenile court jurisdiction, averaging about eight petitions a month. These filings were the result of approximately 9,000 calls and letters to the Emergency Response division of the social service agency.[148] During 1993 there were 835 families in the Family Maintenance Program (in-home services), 115 children in Family Reunification and 155 children in permanency planning. Thirteen adoptions were finalized.[149]

As Commissioner Jeanne Buckley states:

We continue to front-load in an effort to keep families out of the system. For many years there has been a philosophy in the Social Services Department and the Court that children should be with their biological parents if at all possible, and the Court should intervene only when necessary. We are able to provide counseling, parenting, respite, teaching homemakers, transportation, etc. to families in the Family Maintenance Program. We continue to develop services in the community to meet the needs of the families, from drug treatment to an innovative program for abusive families.[150]

Because of the intensive up front services, attorneys have found it difficult to contest a petition. There were only nine contested hearings in 1993.

When a petition is filed, the parents are constantly reminded of the urgency of the proceedings. At the dispositional hearing the judge advises the parents of the date beyond which reunification services will not be extended. This date is written in the court order. At each review the judge reminds the parents that time is of the essence.

If a child is removed from parental custody, Sonoma County offers a variety of reunification services to the family. Reunification is achieved in over 50% of the cases within the statutory eighteen month period. When the court determines that reunification is not possible, it will discontinue services and set a hearing to determine a permanent plan.[151] The juvenile court will hold hearings to terminate parental rights or establish guardianships within four months after reunification services have ended. Most of these hearings are uncontested, and any trials are heard within 30 days of the four month date.[152]

Judge Arne Rosenfield, for many years the Presiding Judge of the Sonoma County Juvenile Court, says that both the social service agency and the court are dedicated to preserving families and keeping cases out of the system. He commented that he and Commissioner Buckley have been active in helping develop community-based services for families as part of the network for both family maintenance and reunification services. Once a case is petitioned, however, they know that the case is serious and they move it along expeditiously.[153]

Commissioner Buckley notes that the most difficult aspect of this philosophy is helping the public understand that removing children is not necessarily the best way to deal with issues of parental abuse and neglect.[154] Many people believe that abusive parents should be punished and not given an opportunity to change their behavior and reunite with their children. Based on her experience, Commissioner Buckley has found that with the use of timely social services most children can be safely returned to their parents.[155]

Kent County, Michigan, with a population of approximately 510,000, has long been recognized as having one of the best juvenile dependency systems in the United States.[156] Its success can be attributed to a combination of prompt, intensive social services and a well-organized court system. Effective social service delivery enables most cases to be resolved without court intervention. Over the past 10 years there has been an average of 3,000 reports of child abuse and neglect in the County, rising to 4,500 reports in 1993. In 1993, after screening, 1,700 of those reports were field-investigated, resulting in 250 juvenile court petitions on behalf of approximately 500 children. In about half of these cases the children had been removed by the social service agency. For those children who were removed, about half were reunited with their families.[157]

The Kent County Juvenile Court has a strong permanency planning policy. For those parents who are not successful in reuniting with their children, there is a high likelihood that their parental rights will be terminated and their children will be adopted. The juvenile court has averaged over 100 terminations of parental rights over the past five years, with 83 in 1993. Of the children freed for adoption, 85% have a successful adoption within six months. There were 130 adoptions in 1991 and 173 in 1992.[158]

A significant reason for the success of Kent County's dependency system has been its ability to provide excellent in-home services to large numbers of families. In 1993, 480 families received in-home assistance including intensive family preservation services.[159] Michigan is fortunate to have Families First, the nation's most successful family preservation program. Families First has become an integral part of social service delivery throughout the state in rural and urban settings, including Detroit. It has become a model which other states are beginning to duplicate.[160]

Those who work within the Kent County Juvenile Court believe that the system works well partly because of the statutory scheme enacted by the Michigan legislature[161] and partly because of the excellent juvenile court process developed through the leadership of Judge John Steketee. That process includes experienced, dedicated juvenile court judges, well-trained staff, and a commitment to completing the legal process within the statutory time frame.[162]

Kent and Sonoma counties demonstrate that when social service systems operate effectively the work of the juvenile court goes much more efficiently. When parents and attorneys realize that extensive preventive services have been provided before a petition is filed and a child removed, the task for the juvenile court becomes much more straightforward. As Judge Steketee has noted about the excellent preventive services delivered in Kent County:

> *By the time a petition is filed, the family has been given a wide array of social services. Those are well documented. Filing a petition clearly becomes a last resort. The result is that in Kent County more than 50% of the petitions which are filed result in a termination of parental rights and an adoption. All parties agree that social services has offered whatever services were appropriate, but the family was not in a position to take advantage of them.*[163]

Other modifications to the juvenile dependency court operation can help reduce tension between the court and the social service agency and build a positive relationship among all participants. First, there should be regular meetings between the agency management and the juvenile court administration, including the presiding judge, lead staff, and chief clerk. These meetings should address administrative issues of common interest. Second, there should be periodic meetings between representatives of all participants in the juvenile dependency process. These meetings should focus upon day-to-day operational issues, complaints about how the system is running, and matters of concern to any participant. From these meetings, improvements in the dependency system may be developed, such as different calendaring, new forms, improved security, and much more.[164]

Third, judges should consider adopting a calendaring system which includes alternative means of resolving cases before contested hearings. No case should be set for trial without some kind of judicially supervised settlement conference in which all parties appear to identify the issues, ensure completion of discovery and other preliminary matters, and hopefully resolve the case. Judges should also consider developing mediation programs which enable conflicts to be resolved with the assistance of skilled mediators.[165] Court calendars should be organized so that they serve the public as well as the court. By asking all families to appear at the first call of the calendar, the court process may be efficient, but many families will have to wait until the end of the calendar to be heard. Courts should experiment with time-specific calendars in order to meet clients' needs.[166]

Fourth, the dependency system must have a means of evaluating its impact upon the children and families with whom it deals. Bureaucracies often focus their energies upon systems issues and forget to ask whether they are serving the clients for whom they were created. The social service agency and the court should regularly evaluate how children and families experience the dependency process. Leaders within the dependency system must be ready to examine any suggestions and make changes if they are valid.[167]

Fifth, judges should attempt to reduce acrimony which often develops in dependency cases, particularly between social workers and parents and between attorneys representing opposing parties. Emotions run high when children are removed from families. The dependency process does not need to have additional stress placed upon it by personality differences and unnecessary conflicts. The judge can have a great impact upon the tone of these proceedings both in and out of the court by letting all parties know that common courtesies must be observed and that bickering will not be tolerated.[168]

Finally, judges and agency administrators should agree to cosponsor events which bring the professional participants in the dependency system together in non-adversarial settings. Trainings and seminars offer two possibilities. A conference is a third.[169]

The Art of the "No Reasonable Efforts" Finding

Judges must follow the law. This means holding hearings on whether children can be returned to parents without harm, whether the social service agency provided reasonable efforts, and what the permanent plan for children should be if reunification has not been successful after 12 or 18 months. To follow the law, a judge must be prepared to make a "no reasonable efforts" finding. This finding, however, should be used skillfully to ensure that services are provided without unnecessarily penalizing the local social service agency. There is an art to the utilization of the "no reasonable efforts" finding.

A principal purpose of the federal Act is to have the agency provide adequate services to families to prevent removal of children and to reunite children with their families after removal. The court can have great impact upon the delivery of social services by letting the agency understand what the court believes should be done in each case. The services the court finds appropriate or "reasonable" may include day care, homemakers, parent training, transportation aid, clinic services, access to emergency shelter, food, money, and more. What is "reasonable" depends upon the facts of a particular case, but the court must inform the social service agency what it expects. In this way the agency will know what to expect when the reasonable efforts issue arises in court.

When the court determines the agency has not provided sufficient services and that its actions have been unreasonable, the court can make a "no reasonable efforts" finding. An effective alternative to consider, however, is to announce that the court will make such a finding unless certain services are provided in the following day or two, and then continue the case and give the agency the opportunity to comply with the court's suggestions.

For example, a case may come before the court in which a child must be removed from a parent. The agency produces sufficient evidence that services

were provided but were inadequate to permit safe return of the child. The agency indicates that the child will be placed in foster care. The court should ask whether relative placement has been explored. If not, the parents and their attorneys should be consulted about relatives who should be immediately investigated for their ability to provide a temporary home for the child. Relative care often is less traumatic for the child, leads to more meaningful and frequent contact between parents and the child, and may even be less costly. Once the agency understands that the court will inquire about relatives in every case, the investigation regarding relatives will take place before the preliminary protective hearing. The threat of a "no reasonable efforts" finding will have changed social service practice and benefited children and families.[170]

Another way in which the "no reasonable efforts" finding can be utilized effectively relates to the availability of services. If the social service agency indicates that a particular service, homemaking for example, is not available, the court may wish to take evidence on whether that service should reasonably be provided in that community to families at risk of losing their children. One source of information for the court may be the state plan in which the state department of social services indicates to the federal government what services it will provide to families in exchange for the federal monies it receives. If the state plan indicates that family preservation, visitation or other critical services are available, the judge should determine what these services are and how they can be used.

Unfortunately, state plans for Title IV-E monies are difficult to locate, and, once found, are difficult to understand. The plans are written in bureaucratic language comprehensible only to those in the federal and state agencies. Even if they were available, judges and attorneys would find these plans useless for the reasonable efforts determinations which must be made in court.[171]

State plans must be much more than private communications between the state and federal government. They must be clearly written and must indicate what services the state promises to provide. In addition, they should be widely disseminated so that members of the public, and particularly those in the juvenile court system, can have access to them. At a minimum, each state social service agency should send a copy of its state plan to every juvenile court judge in the state. State plans are particularly important since the United States Supreme Court ruling in *Suter v. Artist M.*,[172] in which the court foreclosed individual claims for violations under the Act and declared that any sanctions for such violations must be sought exclusively pursuant to its dictates. Since the Act utilizes the auditing process as its primary sanction for the supervision of state compliance with state plans, access to those plans by the court system is critical.[173]

If the court concludes that a particular service is reasonable, and the social service agency maintains that it cannot afford the service, the court might consider giving the agency the opportunity to approach the elected officials who control its finances. Armed with the warning that the adverse consequences of a "no reasonable efforts" finding will be forthcoming, the agency may have more persuasive powers with political leaders.[174] The letter attached at the conclusion of this Appendix offers an example of this strategy. Of course, the agency may have within its own resources the ability to provide the service. Many agencies have reorganized their service delivery system to provide services more quickly and intensively.[175]

These approaches assume that the juvenile court judge is prepared to learn how social services are delivered and what services are available in the community. They also assume the judge will take an active role on the bench, fulfill that role, and have the impact anticipated by the federal Act.[176]

The juvenile court judge has a role even if the situation seems hopeless, as it may in some urban jurisdictions where thousands of children languish in care without permanent plans, where social services do not exist, and where observers call the system an abysmal failure. The role is not to sit idly by, ignore the law, and become one of the silent professionals who agree not to discuss what is happening.[177] The juvenile

court judge's role is to follow the law, to speak out in court and demand better services for the children and families who come before the court. It is to end the conspiracy of silence and speak out in the community so that decision-makers at the highest political levels understand they have given the court a task but have failed to provide the resources necessary to complete that task.[178] As the San Francisco County Civil Grand Jury declared in reviewing the difficulties facing the San Francisco child welfare system:

[I]n a democracy child welfare does not receive its proper attention unless there are political leaders willing to stake their careers on delivering real and lasting solutions to the problems of children.[179]

Resources, of course, are what much of this discussion has been about. The social service agency would gladly provide services if the resources were available, but often they are not. The court "understands" this and remains quiet. But the court must not be co-opted into silence. The court must let leaders in the legislative and executive branches know that there are serious resource deficiencies which they have an obligation to address. The court can do no less.

Conclusion

The Adoption Assistance and Child Welfare Act of 1980 redefined child welfare policy and legal practice in the United States. The Act emphasizes preventive and reunification services and permanency planning for children. It challenges social service agencies to change the ways in which they deliver services to families. It gives oversight responsibility of children in placement to juvenile court judges.

Over a decade after its passage, the federal law is not being implemented well in many jurisdictions. There are numerous reasons, including inadequate resources and the failures of social service agencies and juvenile courts to follow the law. This must change. The federal Act provides sensible policy for children who are at risk of being or who have been removed from their homes. It recognizes the overriding importance of child protection while striking a reasonable balance between family preservation and permanency for children. Those within the child welfare system must examine how the law is implemented, participate in training on its implementation, and dedicate themselves to follow its dictates. In this way we can maximize the opportunities for our nation's most vulnerable children and their families.

There is reason for optimism concerning the implementation of the federal law. Several new federal initiatives will give states the opportunity to assess service delivery to families and utilize new federal money to create a more effective response to families in crisis. Court systems will be provided the opportunity to assess and improve court operations.

Several jurisdictions have demonstrated that the law can work well, that resources can be effectively used, and that children and families can be well served. Early provision of intensive social services, well organized court systems, and cooperation between those who serve these children and families are common to all. In jurisdictions in which the juvenile dependency system is not functioning well, the juvenile court judge has a crucial role to play. The judge can use the techniques built into the federal law, including the "reasonable effort" provision, to change social service practice. The judge can work with the social service agency to improve the system. If resources are inadequate, the judge can help persuade political leaders of the system's needs.

The juvenile court judge is in a unique position to ensure that the federal Act is properly implemented. With an adequately resourced and intelligently run court system, the judge can have a positive impact upon the delivery of services, the timeliness of service delivery, and the availability of services in the community. Once a child is under the court's protection, the judge can ensure that families are provided with due process, that they receive social services and that permanency for the child is reached in a timely fashion. The realization of these goals will greatly benefit our nation's most vulnerable children and their families.

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Notes

1 The author is a Superior Court Judge in Santa Clara County, California. The author wishes to express thanks to Robert Praksti, Judge William Jones, Helen Donnelly, Jennifer Williams, and Patricia White for assisting in the preparation of this article.

2 42 U.S.C., § 670 *et seq.* (1989).

3 As of 1990, only 24 states had enacted implementing legislation. See Alice Shotton, "Making Reasonable Efforts in Child Abuse and Neglect Cases: Ten Years Later," *Cal.West.L.Rev.* 223 (1989-1990). Several other states have enacted such legislation since then. See, e.g., *An Act Relative to Proceedings Involving Children in Need of Care and Protection*, Mass.Rev.Stat. Ch. 303 of the Acts of 1993, (Supp. 1994).

4 See, *supra* end. 3.

5 42 U.S.C. § 670 (a) (15) (1989).

6 From 1985 to 1990 there was a 31% increase in reports of child abuse, reaching a total of 2.5 million reports in 1989-1990. 1990 Survey (National Committee on the Prevention of Child Abuse, Chicago) 1990. Another indication is drug use by pregnant women. Deanna S. Gomby and Patricia H. Shiono, "Estimating the Number of Substance Exposed Infants," *The Future of Children*, 1.1, Spring 1991, at 17-25. Estimates are that from 375,000 to 739,200 babies are born substance-exposed each year as a result of maternal drug use.

7 Hardin reports a 312% increase in child abuse and neglect case filings in New York between 1984 and 1989, a 292% increase in Michigan between 1984 and 1988, and a 90% increase in Rhode Island between 1982 and 1989. Mark Hardin, *Ten Years Later: Implementation of Public Law 96-272 by the Courts*, (American Bar Association Center on Children and the Law) 1990.

8 J. Tatara, "Child Substitute Flow Data for FY 1990 and Child Substitute Care Population Care Trends Since FY 1986 (Revised Estimates)," *VCIS Research Notes* (May 3, 1991).

9 42 U.S.C. § 670 (a) (15) (1989).

10 Michele Ingrassia and John McCormick, "Why Leave Children with Bad Parents?" *Newsweek*, April 25, 1994, at 52-56. Heather McDonald, "The Ideology of 'Family Preservation,'" *The Public Interest*, No. 115, Spring 1994, at 45-60.

11 Mary Pride, *The Child Abuse Industry*, (Crossway Books 1986); Richard Wexler, *Wounded Innocents: The Real Victims of the War Against Child Abuse*, (Prometheus Books 1990). These children without permanent homes were identified in congressional hearings leading up to the passage of P.L. 96-272 as caught in "foster care drift." See, Garrison, *infra* end. 19. That these children are not adopted and often do return home is verified by the American Public Welfare Association which states that two thirds of children who leave foster care are reunited with their parents and only 7.7% are adopted. Ingrassia and McCormick, *supra* end. 10, at 56. The delays in reaching a permanent home once in foster care are well-documented by Richard P. Kusserow. See, Kusserow, *infra* end. 12.

12 Richard P. Kusserow, *Barriers to Freeing Children for Adoption*, (Department of Health and Human Services, Washington, D.C.) February 1991.

13 Congress anticipated this response from the courts, but concluded that the judiciary would take the newly-created responsibility seriously. Child Welfare Act of 1980, Pub. L. No. 96-272, *Legislative History* (U.S. Congress, Washington D.C.) 1980, at 1465. The committee is aware of allegations that the judicial determination requirement can become a mere *pro forma* exercise in paper shuffling to obtain federal funding. While this could occur in some instances, the committee is unwilling to accept as a general proposition that the judiciaries of the states would so lightly treat a responsibility placed upon them by federal statute for the protection of children. *Id.*

14 To ensure implementation of the "reasonable efforts" requirement, a state should review its statutes to determine whether legislative change or change in court rules may be helpful or necessary in assuring the court's cooperation in relation to the judicial determination requirements in section 472(a) (1). *Policy Announcement* (U.S. Department of Health and Human Services, Administration for Children, Youth and Families, Human Development Services) 1984, at 4, 5.

15 Two commentators summarize the barriers facing judicial oversight:

[T]he authority of judges in these matters is often limited; they do not have the power to order the agency to provide services to an individual. In some states, the courts will make a positive "reasonable efforts" determination regardless of agency efforts in order to ensure federal funding. Judges are not trained in matters over which the juvenile court has jurisdiction and, because of rotation schedules, remain in the assignment for a short period of time. Consequently, they do not acquire the experience needed to handle these sensitive cases. While judges in some localities make a good faith effort to determine whether adequate services have been offered to the family, in many localities a positive finding is merely a matter of checking a box on a preprinted form. Susan Goodman and Joan Hurley, *Reasonable Efforts: Who Decides What's Reasonable?* (U.S. Department of Health and Human Services, Washington, D.C.) 1993, at 8.

16 42 U.S.C. § 670 *et seq.* (1989).

17 Most mental health authorities agree that children need stable and continuous care to achieve normal emotional growth. Disruption in their placements or relationships can harm children and make it more difficult for them to form close emotional relationships in life. See generally, Goldstein, Solnit and Freud, *Beyond the Best Interests of the Child*, (Free Press 1973); Leon A. Rosenberg, "The Techniques of Psychological Assessment as Applied to Children in Foster Care and Their Families," *Foster Children in the Courts*, at 550-574 (Mark Hardin, ed. 1983).

18 A major reason for the enactment of legislation dealing with these programs is the evidence that many foster care placements may be inappropriate, that this situation may exist at least in part because federal law is structured to provide stronger incentives for the use of foster care than for attempts to provide permanent placements. Adoption Assistance and Child Welfare Act of 1980, Pub. L. No. 96-272, *Legislative History* (U.S.

Congress, Washington, D.C.) 1980, at 1464.
19 "Foster care drift" describes the situation of children lost in the child welfare system who move from placement to placement without ever achieving permanency. See, Marsha Garrison, "Why Terminate Parental Rights?," 35 *Stan.L.Rev.* 423 (1983).
20 See, Marylee Allen, et al., "A Guide to the Adoption Assistance and Child Welfare Act of 1980," *Foster Children in the Courts*, at 576-577 (Mark Hardin, ed. 1980).
21 See, M. Allen and J. Knitzer, *Children Without Homes* (1978); V. Pike, et al., *Permanent Planning for Children in Foster Care: A Handbook for Social Workers* (1977).
22 See, Goldstein, Solnit and Freud, *supra* end. 17; Michael Wald, "State Intervention on Behalf of 'Neglected' Children: A Search for Realistic Standards, 27 *Stan.L.Rev.* 985 (1983).
23 *Vermont Department of Social and Rehabilitative Services v. U.S. Department of Health and Human Services*, 798 F.2d 57, United States Department 59 (2d Cir. 1986), *cert. denied*, 479 U.S. 1064 (Jan. 27, 1987); *Rehearing denied*, March 2, 1987.
The Act encourages states to prevent the unnecessary removal of children from their homes and to reunify foster children with their families, by making state eligibility for Title IV-B and Title IV-E funds contingent upon the implementation of certain services and protections for children and their families. *Supra* end. at 20 (a) (1989).
24 42 U.S.C. § 670 (a) (1989).
25 42 U.S.C. §§ 670 and 675 (5) (1989). In order to protect children from being unnecessarily removed from their homes and placed in foster care, the amendments would require that preventive services must first be made available to the child and the family. These services may include, for example, homemaker services, day care, 24-hour crisis intervention, emergency caretaker services, emergency temporary shelters and group homes for adolescents, and emergency counseling. H.R. Rep. No. 136, 96th Cong., 1st Sess. 46-47 (1979).
26 42 U.S.C. § 672 (a) (1) (1989).
27 42 U.S.C. § 671 (a) (15) (1989).
28 *Id.*
29 42 U.S.C. § 675 (5) (A) (1989).
30 42 U.S.C. § 675 (5) (B) (1989). See also, *State of Vermont Department of Social and Rehabilitation Services v. U.S. Department of Health and Human Services, supra* end. 23.
31 42 U.S.C. § 675 (5) (C) (1989). [T]he provision for a dispositional hearing after a set period of time is, I believe, of critical importance. One of the prime weaknesses of our existing foster care system is that, once a child enters the system and remains in it for even a few months, the child is likely become "lost" in the system. Yearly judicial reviews of the child's placement too often become perfunctory exercises with little or no focus upon the difficult question of what the child's future placement should be. Foster care, with few exceptions, should be a temporary placement; unfortunately, under our existing system, temporary foster care becomes a permanent solution for far too many children. This provision requiring a dispositional hearing after a child has been in foster care for a specific period of time should assist states in making the difficult, but critical, decisions regarding a foster child's long-term placement. 123 *Cong.Rec.* S22684 (daily ed. August 3, 1979) (statement of Senator Cranston during Congressional hearings). Note that the dispositional hearing referred to by Senator Cranston is a hearing which takes place no later than 18 months after the child has been removed from the family. It is more commonly referred to as a permanency planning hearing. The term "disposition" usually refers to the hearing which takes place immediately after the court has taken jurisdiction over the child. See also, H.R. Rep. No. 136, 96th Cong., 1st Sess. 50 (1979) (remarks of Rep. Ullman).
32 *Id.*
33 Social Security Act §§ 472(a) (1) (e) - (g); 42 U.S.C.A. § 672 (a) (1), (e), (f), (g) (West Supp. 1994).
34 In most jurisdictions these safeguards include the right to notice of the proceedings, the right to be represented by counsel, the right to a hearing on the issues before the court, and the right to appeal the decisions of the court. Social Security Act §§ 427 (a) (2) (B), 471 (a) (15), 471(a) (16), 472 (a) (1), 472 (e), and 475 (5). See also, 42 U.S.C. § 675 (5) (C) (1989).
The Act also requires the parents to be able to participate at all reviews. This participation has been interpreted to mean that the parents have the right to notice, to receive information on which the agency is basing its proposed plan, and to have representation. Allen, et al., *supra* end. 20, at 597.
35 Child Welfare Act of 1980, P.L. 96-272, *Legislative History* (U.S. Congress, Washington D.C.) 1980, at 1465.
A review by a body external to the agency increases the likelihood of careful case planning and requires the agency to account for the child's well-being. Allen, et al., *supra* end. 20, at 583.
36 The Secretary shall approve any plan which complies with the provisions of subsection (a) of this section. However, in the case in which the Secretary finds, after reasonable notice and opportunity for a hearing, that a state plan which has been approved by the Secretary no longer complies with the provisions of subsection (a) of this section, or that in the administration of the plan there is a substantial failure to comply with the provisions of the plan, the Secretary shall notify the state that further payments will not be made to the state under this part, or that such payments will be made to the state but reduced by an amount which the Secretary determines appropriate, until the Secretary is satisfied that there is no longer any such failure to comply, and until he is so satisfied he shall make no further payments to the state, or shall reduce such payments by the amount specified in his notification to the state. 42 U.S.C. § 671(b) (1989).
37 See, Hardin, *supra* end. 7.
38 42 U.S.C. §§ 670 and 671 (1989).
39 A copy of model forms that can be utilized in such a case and in juvenile court dependency matters can be obtained from Robert Praksti, Director, Permanency Planning Project, National Council of Juvenile and Family Court Judges, P.O. Box 8970, Reno, Nevada 89507.
40 Some states have defined "reasonable efforts." For example, the Minnesota Juvenile Code provides:
"Reasonable efforts" means the exercise of due diligence by the responsible social service agency to use appropriate and available services to meet the needs of the child from the child's family; or

upon removal, services to eliminate the need for removal and reunite the family. Services may include those listed under section 256F.07, subdivision 3, and other appropriate services available in the community. The social service agency has the burden of demonstrating that it has made reasonable efforts. Minn. Stat. § 260.012(b) (West Supp. 1992). See also, N.Y. Soc. Ser. § 384-b (8) (f) (McKinney Supp. 1992) (defining "diligent efforts"). See also, *In the Interest of A.L.W.*, 773 S.W.2d 129 (Mo. Ct. App. 1989) (cites the definition of reasonable efforts in Mo. Rev. Stat. § 211.183 [West 1984 and Supp. 1994] therein).

41 A definition of reasonable efforts would not necessarily be helpful to the implementation of the federal law. Minn.Stat. § 260.012(b) (West Supp. 1992). As the Minnesota definition indicates, any attempt to define reasonable efforts must be general, leaving great discretion for the judge to compare the efforts undertaken to the available resources or the resources which should have been available. *Id.*

42 See, Hardin, supra end. 7, at 3.

43 *Id.*

44 *Id.*, at 53.

45 It is unlikely, in situations described above, that a meaningful "reasonable efforts" determination can be made. The overloading of the system without necessary resources (e.g., services, agency and court personnel, automated systems) hinders any sort of meaningful reform and allows for little more than crisis management. Goodman and Hurley, supra end. 15, at 10.

46 See, *supra* end. 31 (definition of permanency planning hearing).

47 Kusserow, *supra* end. 12; Debra Ratterman, "Termination Barriers: Speeding Adoption in New York State Through Reducing Delays in Termination of Parental Rights Cases," Final Report, *American Bar Association Center on Children and the Law* (1991); Hardin, *supra* end. 7, at 55-56.

48 Shotton, *supra* end. 3, at 227.

49 *Id.*

50 *Policy Announcement*, ACYF-PA-84-1 (U.S. Department of Health and Human Services, Washington D.C.) Jan. 13, 1984, at 4.

51 Charlotte B. McCullough, "The Child Welfare Response," *The Future of Children*, 1.1, Spring 1991, at 61-62; Leroy H. Pelton, *For Reasons of Poverty*, at 76 (Praeger 1989).

52 *LaShawn A. v. Dixon* S.P., 762 F.Supp. 959 (D.D.C. 1991), *aff'd LaShawn v. Kelly*, 990 F.2d 1319 (D.C. Circ. 1993).

53 *In re Ashley K.*, 571 N E 2d 905 (Ill.App. Ct. 1991).

54 Georgene Siroky, *Youth Law News*, July-August, 1993, at 20. The situation for attorneys in Cook County is no better:

. . . [O]verworked public defenders have only a few minutes to interview juvenile clients prior to important hearings. *Final Report of the Illinois Supreme Court Special Commission on the Administration of Justice, Part II: Juvenile Justice* (Springfield, Ill.) 1993, at 4, 9.

55 Family preservation services is a term generally referring to services provided to families at risk of dissolution. Typically, these services are delivered for a short term and are designed to meet the specific needs of the family. Family preservation services are often delivered in home by workers who have one or two families and are able, therefore, to work intensively with each particular family. Some of the common elements in programs delivering family preservation services are as follows, *Keeping Families Together: the Case for Family Preservation*, at 8-9 (Edna McConnell Clark Foundation 1985):

- They accept only families on the verge of having a child placed.

- They are crisis-oriented and see each family as soon as possible after the referral is made.

- Their staff responds to families round the clock, maintaining flexible hours seven days a week.

- Their intake and assessment process carefully ensures that no child is left in danger.

- They deal with each family as a unit, rather than focusing upon parents or children as problematic individuals.

- Workers see families in their own homes, making frequent visits convenient to each family's schedule.

- Their approach combines teaching family members skills, helping the family obtain necessary resources and services, and counseling based on an understanding of how each family functions as a system.

- They deliver services based on need rather than on categories that would ordinarily be assigned to each case.

- Each worker carries a small caseload at any given time. Sometimes staff members work in teams of two to a family, providing each other with support and easing the demands of their irregular schedules.

- They limit the length of their involvement with each family to a short period, typically between two and five months.

- They provide their staff with ongoing in-service training and often require of new staff members a degree in social work or deep knowledge of the community.

- They follow up on families to assess their progress and evaluate the program's success. *Id.* For one of the best explanations of the value of family preservation, see, Douglas Nelson, *Recognizing and Realizing the Potential of "Family Preservation"* (The Center for the Study of Social Policy, Washington D.C.) 1988. And see, *A Round Table Discussion of Fifteen State-Based Child Advocates on Family Preservation Services* (Citizens for Missouri's Children, St. Louis) 1991.

56 Mark Hardin, "Judicial Implementation of Permanency Planning Reform: One Court that Works," *American Bar Association Center on Children and the Law*, 1992; *Dependency Department Five Year Review*, 1986-1990 (Hamilton County Juvenile Court, Cincinnati) 1991.

57 Andrew Gottesman, "Two Cities Can Teach Chicago Juvenile Court Lessons," *Chi. Trib.*, December 22, 1993, at 1, 15, 16.

58 H. Ted Rubin and Richard J. Gable, *Depen-*

dency Proceedings in California Juvenile Courts (National Center for State Courts, San Francisco) 1990.

59 See, *Steps for Preserving Families, Guidelines for Practice,* (Kent County Juvenile Court Reasonable Efforts Project Staff, Grand Rapids, Michigan) 1989 (a description of the law, policies and procedures developed by the Kent County Juvenile Court). See also, Ron Apol, *Kent County Reasonable Efforts Model Court Project, Final Report,* (Kent County, Michigan) 1990.

60 Shotton, *supra* end. 3.

61 *In Interest of S.A.D.*, 555 A.2d 123 (Pa.Super.Ct. 1989).

62 *In re Nicole G., et al.*, 577 A.2d 248 (R.I. 1990).

63 *Id.*, at 250.

64 *Id.*, at 252. A similar result was reached in the case of *Norman v. Johnson*, 739 F.Supp. 1182 (N.D.Ill., 1990), in which the court found that the state of Illinois wrongfully placed children in foster care because, in part, their parents were unable to provide adequate housing. For the availability of federal housing assistance, refer to the Family Unification Act, 42 U.S.C.A. § 1437(f) (West 1978 and Supp. 1993).

65 *In the Interest of A.L.W.*, 773 S.W.2d 129 (Mo.Ct.App.1989).

66 *Id.*, at 133 (the case was *rev'd* and *remanded* to the juvenile court to take further action consistent with the directions of the appellate court).

67 *In Interest of M.D.S.*, 488 N.W.2d 715 (Iowa App. 1992).

68 *In re Burns*, Del. Supr., 519 A.2d 638 (1986).

69 *Id.*

70 *In the Matter of Star A.*, 435 N.E.2d 1080 (N.Y., 1982); *In the Matter of Sheila G.*, 462 N.E.2d 1139 (N.Y. 1984); In re Kathaleen, 460 A.2d 12 (R.I. 1983); *In the Interest of C.K.M.H.*, 829 S.W.2d 674 (Mo. Ct. App. 1992); *Williams v. Department of Health and Rehabilitative Services*, 568 So.2d 995 (Fla. Ct. App. 5th Dist. 1990); *In re Jamie M.*, 472 N.E.2d 311 (N.Y. 1984). California's appellate courts have examined reasonable efforts issues in a large number of cases. E.g., *Michael S.*, 188 Cal.App.3d 1448, 234 Cal.Rptr. 84 (1987); *Micah S.*, 198 Cal.App.3d 557, 243 Cal.Rptr. 756 (1988); *Victoria M.*, 207 Cal.App.3d 1317, 255 Cal.Rptr. 498 (1989); *Kristin W.*, 222 Cal.App.3d 234, 271 Cal.Rptr. 629 (1990); *Mario C.*, 226 Cal.App.3d 599, 276 Cal.Rptr. 548 (1991); *Riva M.*, 235 Cal.App.3d 403, 286 Cal.Rptr. 592 (1991); *Walter P.*, 228 Cal.App.3d 113, 278 Cal.Rptr. 602 (1991); *Christina L.*, 3 Cal.App.4th 404, 4 Cal.Rptr.2d 680 (1992); *Dino E.*, 6 Cal.App.4th 1768, 8 Cal.Rptr.2d 416 (1992); *Joanna Y.*, 8 Cal.App.4th 433, 10 Cal.Rptr.2d 422 (1992); *John V.*, 5 Cal.App.4th 1201, 7 Cal.Rptr.2d 629 (1992); *Misako R.*, 2 Cal.App.4th 538, 3 Cal.Rptr.2d 217 (1992); *Brittany S.*, 17 Cal.App.4th 1399, 22 Cal.Rptr.2d 50 (1993); *Regina V.*, 22 Cal.App.4th 711, 27 Cal.Rptr.2d 515 (1994). And see, Shotton, *supra* end. 3.

71 Case number 37561 (Mass. Super. Ct., filed Sept. 24, 1979); 80-51 (Mass. App. Ct.); SJC-2115 (Mass. Sup. Jud. Ct.).

72 138 Misc.2d 212 (N.Y.Sup.Ct. 1987), *aff'd* 153 A.D.2d 812 (N.Y.App.Div. 1989).

73 The case was consolidated for disposition with *Consentino v. Perales*, 551 N.E.2d 603 (N.Y. 1990).

74 *LaShawn A. v. Dixon K.*, supra end. 52.

75 *Id.*

76 *In re Ashley K.*, supra end. 53.

77 *Id.*

78 See, *Foster Care Reform Litigation Docket* (National Center for Youth Law, San Francisco) 1993 (a summary of foster care reform litigation).

79 *Suter v. Artist M.*, 112 S.Ct. 1360, 118 L.Ed. 2d 1 (U.S. 1992).

80 Bernardine Dohrn, "The Plaintiff Children: The Meaning of *Suter v. Artist M.*," *Civil Rights Litigation and Attorney Fees Annual Handbook,* Volume 8 National Lawyers Guild, Saltzman and Wolvovitz, Clark, Boardman, Callaghan, Deerfield, Illinois, (1993).

81 The objectives of our audit were to evaluate the state's administration of the program in ensuring that Federal funds claimed for Federal financial participation (FFP) for foster care maintenance payments were made on behalf of children who met eligibility requirements stipulated by Federal laws and regulations. *Draft Audit of Title IV-E Foster Care Eligibility in California for the Period October 1, 1988, through September 30, 1991* (Department of Health and Human Services, San Francisco) 1993, at 1.

82 42 U.S.C. § 675 (5) (B) (1989).

83 *State of Vermont Department of Social Services v. U.S. Department of Health and Human Services, supra* end. 23.

84 Documents reflecting the issues addressed by federal auditors for Title IV-E foster care eligibility can be obtained from the author. For a more detailed outline of how the audits are conducted, see, *Financial Review Guide for On-Site Reviews of the Title IV-E Foster Care Program* (U.S. Department of Health and Human Services, Office of Human Development Services) May, 1985. See also, Richard Kusserow, *Semiannual Report to the Congress, October 1, 1988 - March 31, 1989* (Department of Health and Human Services, Office of Inspector General) 1989, at 81; Richard Kusserow, *Semiannual Report to the Congress, April 1, 1990 - September 30, 1990* (Department of Health and Human Services, Office of Inspector General) 1990, at 84; Richard Kusserow, *Semiannual Report to the Congress, October 1, 1991 - March 31, 1992* (Department of Health and Human Services, Office of Inspector General) 1992, at 78.

85 Letter from Wade F. Horn, Commissioner, Administration for Children Youth and Families, to James G. Ledbetter, Commissioner, Department of Human Resources, Georgia, (October, 1988) (a copy of this letter is available from the ACYF or from the author).

86 Letter from Wade F. Horn, Commissioner, Administration for Children, Youth and Families, to Cesar A. Perales, Commissioner, New York State Department of Social Services (July, 1990) (a copy of this letter is available from the ACYF or from the author).

87 Letter from Wade F. Horn, Commissioner, Administration for Children, Youth and Families, to Paul Trause, Secretary, Department of Social and Health Services, State of Washington (October 22, 1992) (a copy of this letter is available from the ACYF or from the author).

88 *Draft Audit, supra* end. 81 (the outcome of the audit is still unknown).

89 However, the significance of the number and

the types of deficiencies, and related dollars, noted in the audit shows a need for strengthening controls over the program. In particular, the high incidence of noncompliance with the judicial requirements mandated by Federal legislation requires corrective action. Without effective implementation of this requirement, controls over the inappropriate removal of children from their homes are weakened. *Draft Audit, supra* end. 81, at ii.

90 *Draft Audit, supra* end. 81.

91 However, the problems that we found in our case reviews extended throughout the 3-year period covered by the audit, and appeared to be ongoing. Our previous statewide audit of California's Foster Care program by the OIG Office of Audit Services contained the same type of problems identified in this audit. The report covered Fiscal Years 1985 and 1986, and resulted in questioned costs of $9,969,292 (report number A-09-87-00077, issued July 22, 1988). Of that amount, $8,453,563 was upheld by ACF, and the state paid this amount to the Federal government. *Draft Audit, supra* end. 81, at 16.

92 This conclusion is based upon the author's conversations with members of the Administration for Children Youth and Families, as well as conversations with juvenile court judges around the country who report that their states have lost Title IV-E monies through the audit process.

93 42 U.S.C. § 627 (1989).

94 Illinois Departmental Appeals Board, Dept. of Health & Human Services, Docket No. 87-154; Decision No. 1037 (April 13, 1989).

95 Illinois Departmental Appeals Board, Dept. of Health and Human Services, Docket No. 91-111; Decision No. 1335 (June 1, 1992).

96 Hardin, *supra* end. 7; Kusserow, *supra* end. 12; Ratterman, *supra* end. 47.

97 Hardin, *supra* end. 7; Shotton, *supra* end. 3.

98 The Permanency Planning for Children Project of the National Council of Juvenile and Family Court Judges and the Edna McConnell Clark Foundation have published numerous educational materials for judges, including booklets, benchguides, protocols, and articles. Three booklets have been particularly helpful for judges: *Keeping Families Together: The Case for Family Preservation, supra* end. 55; *Making Reasonable Efforts: Steps for Keeping Families Together, supra* end. 55; *Protocol for Making Reasonable Efforts to Preserve Families in Drug-Related Dependency Cases*, (National Council of Juvenile and Family Court Judges, Reno) 1992. See, Katharine English, *A View from the Bench: The Judge's Role in Promoting Effective Planning for Families and Children* (National Council of Juvenile and Family Court Judges, Reno) 1991 (another important training article).

99 Court Appointed Special Advocates (CASAs) are trained volunteers who are appointed by the court to speak on behalf of children in court. There are more than 500 CASA programs throughout the United States with more than 50,000 advocates. For further information contact National CASA Association, 2722 Eastlake Avenue East, Suite 220, Seattle, Washington 98102.

100 See, *supra* end. 39 (copies of these forms can be obtained).

101 Title IV-B of the Social Security Act, Subpart 2, Family Preservation and Support Services; Omnibus Budget Reconciliation Act of 1993 (P.L.203-66); 45 C.F.R., Part 92.

102 Letter from Olivia A. Golden, Commissioner, Administration for Children, Youth and Families, Department of Health and Human Services, Washington, D.C. to Interested Persons (February 15, 1994).

103 P.L. 103-66, §§ 13711(d) (2) and 13712.

104 The assessment is to address how juvenile courts are: (a) fulfilling Title IV B and IV-E requirements in foster care cases; (b) making decisions whether to place children into foster care; (c) deciding whether to terminate parental rights; and (d) authorizing appropriate permanent placement, without undue delay, for children who cannot safely return home. *Id.*

105 All states are encouraged to take advantage of these grants. Technical assistance for court systems is being offered by the National Council of Juvenile and Family Court Judges, P.O. Box 8970, Reno, Nevada 89507, attention: Robert Praksti.

106 CFR Chapter XIII, §§ 1356.65(b) and (c) (October 1, 1989, ed.).

107 "A good working relationship between the court and the child welfare agency is essential in meeting the needs of children and families." Goodman and Hurley, *supra* end. 15, at 10.

108 The conference of the juvenile dependency system that we attended has been held annually in California for the past 5 years. This conference brings together federal, state, county and judicial personnel for a continuing dialogue on child welfare issues. The ACF supports this concept and is recommending similar annual regional conferences throughout the nation. *Draft Audit, supra* end. 81, at 23. (For further information about the Beyond the Bench Conference, contact the author at the Superior Court, 191 N. First Street, San Jose, California 95113.)

109 Cal.Welf. &. Inst. Code § 300 *et seq.* (West Supp. 1994); Minn. Stat. §§ 260.01(b), 260.155, 260.172 and 260.191 (Supp. 1994); Mo. Ann. Stat. § 211.183 (Vernon Supp. 1994); Ohio Rev. Code Ann. § 2151.419 (Anderson, 1994).

110 In many jurisdictions the trial judge must merely check a box on a preprinted court form to indicate that reasonable efforts were provided in the case. Shotton, *supra* end. 3. In some other jurisdictions the court order forms simply include a preprinted statement that reasonable efforts were made, thus making the finding possible without the judge's even checking a box. *Id.*, at 227. In some states, courts and agencies have taken a cynical approach, seeking to assure receipt of federal funding without the court taking a meaningful look at reasonable efforts. In such states, words indicating the agency has made reasonable efforts are preprinted into court order forms used when removal of a child is authorized, and laws are structured so a judge cannot authorize a foster placement without a positive finding of reasonable efforts. Hardin, *supra* end. 7, at 54.

111 As of 1990, only about 24 states had passed legislation addressing the juvenile court's reasonable efforts determination. Shotton, supra end. 3, at 234. See also, *State of Vermont D.S.S. v. U.S. Dept. of HHS, supra* end. 30, at 62. Recognizing the lengthy delays caused by the transfer to a dif-

ferent court for termination of parental rights proceedings, several states have enacted legislation permitting juvenile courts to hear termination proceedings. Cal. Welf. & Inst. Code § 300 *et seq.*, (West 1994). The procedures in this law have been upheld by the California Supreme Court in *Cynthia D. v. Superior Court of San Diego County,* 851 P.2d 1307 (1993). Such a statutory scheme has significantly reduced unnecessary delays in the legal process without denying parents their due process rights. *Id.* Legislation in Minnesota, Missouri, and Ohio also offers improved procedures to implement Public Law 96-272. See, *supra* end. 109.

112 Edwards, Judge Leonard, "The Juvenile Court and the Role of the Juvenile Court Judge," *Juvenile and Family Court Journal,* Vol. 43, No. 2, 1992, at 26.

113 Recommendation for the use of masters, referees, or commissioners as a practical and efficient way to increase judicial resources.*Resource Guidelines - Improving Child Abuse and Neglect Court Process,* (National Council of Juvenile and Family Court Judges, Reno) 1995. However, the use of lesser judicial officers presents significant problems.

. . . [M]any (including judges, attorneys and the public) conclude that the work of the juvenile court is of lesser importance than the work performed by judges. If attorneys disagree with a ruling of one of these officers, the law provides that a judge review the findings. More importantly, these judicial officers lack political power in the community. If there are problems in developing resources, in ordering agencies to comply with orders, in getting things to happen outside of the courtroom, these judicial officers have less power to accomplish the task. The power of the juvenile court is necessarily diminished by having lesser judicial officers perform the work of the juvenile court. Id., at 34.

114 Id., at 34-35.

115 *Id.*, at 35 36. See, *Policy Alternatives and Current Court Practice in the Special Problem Areas of Jurisdiction Over the Family* (National Center for Juvenile Justice, Pittsburgh) 1993, at 21-25 (a discussion on the complex issues surrounding rotation).

116 A tragic example of the problems caused by multiple judges making decisions concerning the same child was reported by a committee convened to investigate the death of Joseph Wallace. The committee reported that five judges in Cook and Kane counties made rulings concerning Joseph, but that they were not provided with critical information about previous court hearings. A court system which ensures that a child appears before the same judicial officer will substantially avoid this problem. See, Joel J. Bellows, et al., *The Report of the Independent Committee to Inquire into the Practices, Processes and Proceedings in the Juvenile Court as They Relate to the Joseph Wallace Case,* Chicago (1993) (a copy of this report is available from the author). The Joseph Wallace case was also reported in Ingrassia and McCormick, *supra* end. 10.

117 Most of the metropolitan courts in California have adopted this structure, including Orange County, San Diego County, Los Angeles County, Sacramento County, San Francisco County, and Santa Clara County. The Denver Juvenile Court recently similarly modified its juvenile court structure.

Judge William Jones of Mecklenberg County, North Carolina (Charlotte), suggests that juvenile dependency and delinquency cases should be divided among the juvenile court judges hearing cases. He points out that dependency cases are more stressful and that dividing the calendars will protect judges against burnout. Letter and notes from Judge William Jones to Judge Leonard Edwards (March 14, 1994) (a copy of the letter is available from the author).

118 Edwards, *supra* end. 112, at 35. Family court judges and attorneys representing children must be educated and empowered to make appropriate decisions for families and children and to help them get the services they need. They, as well as child welfare caseworkers, must be relieved of the staggering caseloads that make reflective decision-making impossible. *America's Children At Risk: A National Agenda for Legal Action* (American Bar Association, Chicago) 1993, at 47.

119 Edwards, *supra* end. 112, at 41.

120 For example, Robert B. Gunnison, "S.F. Foster Care Called Worst in California, *S.F. Chron.,* March 3, 1994, at 1. No juvenile court has had more publicity, most of it negative, than the Cook County Juvenile Court. Much of that court's difficulties relate to long-standing under funding of the juvenile court judiciary. Andrew Gottesman, "Juvenile Court Can Rarely Spare the Time to Care," *Chi. Trib.,* December 21, 1993, at 1; Jan Crawford, "Juvenile Court Judged a Disaster," *Chi. Trib.,* December 23, 1993, at 1; "State Court System Needs More Change," Editorial, *Chi. Sun-Times,* December 23, 1993; "44 Vacancies in Courts Should Be Filled Now: Commentary, *Chi. Sun-Times,* January 14, 1994; see also, Bellows, et al., *supra* end. 116.

121 (c) The presiding judge of the juvenile court should:

(1) Encourage attorneys who practice in juvenile court, including all court-appointed and contract attorneys, to continue their practice in juvenile court for substantial periods of time. A substantial period of time is at least two years and preferably from three to five years.

(2) Confer with the county public defender, county district attorney, county counsel and other public law office leaders and encourage them to raise the status of attorneys working in the juvenile courts as follows: hire attorneys who are interested in serving in the juvenile court for a substantial part of their career; permit and encourage attorneys, based on interest and ability, to remain in juvenile court assignments for significant periods of time; work to ensure that attorneys who have chosen to serve in the juvenile court have the same promotional and salary opportunities as attorneys practicing in other assignments within a law office.

(3) Establish minimum standards of practice to which all court-appointed public office attorneys will be expected to conform. These standards should delineate the responsibilities of attorneys relative to investigation and evaluation of the case, preparation for and conduct of hearings, and advocacy for their respective clients.

(4) In conjunction with other leaders in the legal community, ensure that attorneys appointed in the juvenile court are compensated in a manner equivalent to attorneys appointed by the court in other types of cases. Rule 24 (c): *Standards of Judicial Administration Recommended by the Judicial Council,* (West 1994).

And see, Leonard Edwards, "A Comprehensive Approach to the Representation of Children: The Child Advocacy Coordinating Council," 27 *Family Law Quarterly* 3 (Fall 1993) at 417-431.

122 Rule 24(d), *supra* end. 122; NCJFCJ, et al., *Making Reasonable Efforts* (Edna McConnell Clark Foundation, New York, N.Y.) 1987, at 62.

In a Task Force Report focusing upon judges and professionals working in the juvenile and family courts, the recommendations included mandatory training on family and juvenile court issues for all judges within one year of taking the bench and specified the topics to be covered in that training. The Task Force recommended similar training for attorneys, mental health providers, and social work professionals. Senate Task Force on Family Relations Court, Final Report, Senate Office of Research, Sacramento, CA (1990) at 32-36.

123 State statistics in California reveal wide variations in social service practices in different jurisdictions. In some counties the numbers of children who remain in their homes with services is five to ten times greater than other counties. Sonoma and San Mateo counties stand out as examples of jurisdictions which are able to maintain children safely in their homes with services. *Statewide Report on Children's Services Caseload,* November, 1992 California Dept. of Social Serv., Sacramento, California) November 1992.

Similar differences exist in Illinois where the numbers of abuse and neglect petitions per 1,000 juveniles reveal that Champaign, Madison, and Cook counties have three to four times as many petitions as Will and Lake counties. Probation Division, Administrative Office of Illinois Courts, *1992 Annual Illinois Juvenile Petition, Adjudication, and Prosecution Report* (Probation Division, Administrative Office of Illinois Courts, Illinois) 1992, *cited in Final Report of the Illinois Supreme Court Special Commission on the Administration of Justice, Part 11: Juvenile Justice,* (Illinois Supreme Court Special Commission, Springfield, Illinois) 1993, at 17.

124 Ruth Lork, et al., "When Home Is No Haven: Child Placement Issues (1992)," reprinted in *DCYS Bulletin #30,* Man. Vol. 2 (a copy of the guidelines is also contained in Appendix D of *America's Children At Risk), supra* end. 119.

125 The authors note that cigarette and alcohol exposure occurs among 38% and 73% of all pregnancies, respectively. Gomby and Shiono, *supra* end. 6.

126 Inger J. Sagatun-Edwards, Coleen Saylor, and Bethany Shifflett, *Drug Exposed Infants in the Social Welfare System and Juvenile Court,* forthcoming in Child Abuse and Neglect. A copy is available from the author.

127 National Council of Juvenile and Family Court Judges, Protocol for Making Reasonable Efforts to Preserve Families in Drug-Related Dependency Cases, (Permanency Planning Project, Reno, Nevada) 1992.

128 Model Needs Assessment Protocol, SB 2669 (Health and Welf. Agency, Sacramento, California) 1991.

129 For purposes of this article, a positive toxicology screen at the time of the delivery of an infant is not in and of itself a sufficient basis for reporting child abuse or neglect. However, any indication of maternal substance abuse shall lead to an assessment of the needs of the mother and the child pursuant to Section 10901 of the Health and Safety Code. If other factors are present that indicate risk to a child, then a report shall be made. However, a report based on risk to a child which relates solely to the inability of the parent to provide the child with regular care due to the parent's substance abuse shall be made only to county welfare departments and not to law enforcement agencies. Cal. Penal, Code § 11165.13, (West Supp. 1994).

130 Commissioner Jeanne Buckley noted in a judicial seminar that cases involving the drug-exposed baby do not have a significant impact upon the Sonoma County Juvenile Court because those cases do not come before the court. She said that there were so many services available to the baby and mother in her county that most cases are safely resolved without any formal legal intervention.

131 Barbara Bloom and David Steinhart, *Why Punish the Children: A Reappraisal of the Children of Incarcerated Mothers in America,* (NCCD, San Francisco) 1993.

132 This technique has been refined in California with the enactment of several statutes which outline how such dismissals can take place. See, Cal. Welf. & Inst. Code §§ 304 and 362.4, Juvenile Court Forms JV-200 & JV-250; Leonard Edwards, "The Relationship of Family and Juvenile Courts in Child Abuse Cases," 27 *Santa Clara L. Rev.* 2 (Spring 1987), at 201-278.

133 Kusserow, *supra* end. 12.

134 See, generally, Kusserow, *supra* end. 12.

135 Judith K. McKenzie, "Adoption of Children with Special Needs," *The Future of Children, Adoption,* (Center for the Future of Children, David and Lucile Packard Foundation) Vol. 3, No. 1, Spring 1993, at 63-64.

136 This conclusion is based upon the author's conversations with juvenile court judges throughout the United States.

137 McKenzie, *supra* end. 135, at 64-66; James A. Rosenthal, "Outcomes of Adoption of Children with Special Needs," *The Future of Children, Adoption, supra* end. 135, at 77-88.

138 See, generally, *Keeping Families Together: The Case for Family Preservation, supra* end. 97, at 47-53; Edwards, supra end. 112, at 28.

139 Kusserow, *supra* end. 12.

140 Final Report of the Illinois Supreme Court, *supra* end. 54, at 9.

141 There's a lot of tension between CPS and the court. CPS workers are somewhat enraged with the court. They have trouble accepting that the court can't act on "I want" or "I feel." Workers sometimes wind up resentful of the court because it imposes deadlines, requires reports, orders appearances, and they feel overwhelmed. . . [Caseworkers] have a history of poor relationships with the court. When it goes to court ev-

eryone reads the caseworker's report and says "Where's the proof?" When things are dropped in the petition, the workers say "Doesn't anyone read our reports?" Caseworkers aren't thinking about evidence and legal limits. *Alternatives to Adjudication in Child Abuse and Neglect Cases,* (The Center for Policy Research, Denver) 1992, at 20.

142 Nathan Glazer has criticism for judicial administration of social services. "Should Judges Administer Social Services," by Nathan Glazer, *The Public Interest,* No. 50, Winter 1978, at 64-80.

143 Some judges think they know more about each case than the social worker who has handled it. And some agencies routinely frustrate judges by giving out too little information on the cases at hand. *Keeping Families Together, supra* end. 97, at 34.

144 Child protective service workers are open targets for public criticism. Society is quick to blame them if a child is reinjured or killed. But society is also quick to blame them for the number of children "snatched" from their parents and placed in the "limbo" of foster care. Key Drew, "The Role Conflict of the Child Protective Service Worker: Investigator Helper," *Child Abuse and Neglect,* Vol. 4, 1980, at 250.

It seems that child protection agencies cannot win. In the first case, an allegation is dealt with in a routine fashion, and a child dies. On the second occasion, a suspicion leads to a prompt and decisive action [which later proves unnecessary]. Either way the social services department finds itself pilloried for bureaucratic delay or for overzealous intrusion into family life. Robert Dingwall, John Eekelaar, and Topsy Murray, *The Protection of Children,* (Basil Blackwell Ltd., Oxford, England) 1983, at 1-2.

145 Pride, *supra* end. 11; Wexler, *supra* end. 11.

146 Ingrassia and McCormick, *supra* end. 10.

147 Refer to the jurisdictions cited at *supra* end. 56-59 and the accompanying text.

148 The emergency response unit is comparable to child protective services in other states.

149 Jurisdictions can measure the success of their preventive services by comparing the numbers of families receiving in-home services to those in which the child was removed and the family is receiving reunification services. In Sonoma County there are far more families in the Family Maintenance Program than in all other programs combined.

150 Letter from Jeanne M. Buckley, Superior Court Commissioner, to Judge Leonard P. Edwards, Santa Clara County Superior Court (March 15 1994) (a copy is available from the author).

151 These hearings are described in Cal. Welf. & Inst. Code §§ 366.216 & 366.22 (West Supp. 1994).

152 These hearings are held pursuant to Cal. Welf. & Inst. Code § 366.26 (West Supp. 1994). The California Supreme Court has held this statutory scheme constitutional in the case of *Cynthia D. v. Superior Court,* 815 P.2d 1307 (1994). Buckley, *supra* end. 143.

153 Letter from Judge Arnold D. Rosenfield, Sonoma County Superior Court, to Judge Leonard P. Edwards, Santa Clara County Superior Court (April 26, 1994) (a copy is available from the author).

154 *Supra* end. 150.

155 *Id.*

156 Kent County has been selected as a model by the American Bar Association as it attempts to identify the best juvenile dependency systems in order to provide technical assistance to other jurisdictions. Arn Shackelford, "Juvenile Court System Studied as Model," *Grand Rapids Press,* Michigan, April 20, 1994. The Kent County Juvenile Court was recognized as a model in the book, Howard Jones, *Children in Trouble: A National Scandal,* D. McCay Co., N.Y., 1969. Judge John Steketee has been honored numerous times for his leadership as Presiding Judge of the Kent County Juvenile Court.

157 These statistics were provided by Ron Apol, Supervisor, Permanency Planning Department, Kent County Juvenile Court, Grand Rapids, Michigan.

158 *Id.*

159 See, *supra* end. 55 (for a definition of family preservation services).

160 Gerald H. Miller, "Families First Keeps Children Safe at Home," *Detroit Free Press,* Sunday, May 1, 1993, at 3F. For further information about Families First, contact Susan Kelley, Director, Families First, 235 S. Grand Avenue, #415, Lansing, Michigan 48909. (313) 434-8277).

161 One of the unique aspects of the Michigan statutory scheme is that each case of a child removed from home is reviewed every 91 days instead of six months as mandated by the federal Act. [MCL 712A.19(3); MCR 5.973(8) (2)]. The juvenile court also makes permanency planning decisions at 12 rather than at 18 months. [MCR 5.973 (D) (2)]. These changes were based upon experience in Michigan that frequent reviews were helpful for the reunification process and that the six months after the 12 month hearing was not helpful in reuniting families. See also, Donald N. Duquette, *Michigan Child Welfare Law* (Michigan Department of Social Services, Ann Arbor) 1990.

162 See, *supra* end. 59.

163 Phone calls between Judge John Steketee and Judge Leonard Edwards (February to April 1994).

164 See also, "Relationship Between Court and Social Services Agencies," *Judicial Review of Children in Placement Deskbook,* (NCJFCJ, Reno, Nevada) 1984, at 39.

165 Recommendation 7.10. In addition to continuing to mandate mediation in child custody cases, the courts should expand mediation's use to all appropriate family and juvenile matters, including dependency, minor delinquency matters, and financial issues. *Children and Families, Justice in the Balance: 2020, Commission on the Future of the California Courts,* ch. 7 (California Judicial Council, San Francisco) 1994, at 127.

Mediation represents a significant improvement over the pretrial approaches utilized in most juvenile courts. *Alternatives to Adjudication in Child Abuse and Neglect Cases, supra* end. 141, Executive Summary.

Pursuant to Statutes of 1992, ch. 360, SB 1420 (1992), California has a five-county pilot project offering mediation in juvenile dependency cases. Thus far the results seem to be very positive for

all parties involved. An evaluation of the project will be conducted in the summer of 1994 (for further information, contact the author).

166 Judge Donna Hitchens, the Presiding Judge of the San Francisco Juvenile Court has developed such a calendaring system. For further information, contact her at the Juvenile Court, 375 Woodside Avenue, San Francisco, CA 94127.

167 Richard O'Neil, Director of the Santa Clara County Social Service Agency, hired a consulting firm to evaluate the county's child welfare system from the perspective of the clients, including children, parents, and foster parents. This evaluation will be of great assistance in developing policies which are sensitive to client's needs. For further information, contact the Social Service Agency, 1725 Technology Drive, San Jose, CA 95110.

168 The Santa Clara County Bar Association has adopted a Code of Professional Conduct describing the behavior expected of attorneys in and out of the courtroom. This Code has been approved by both the Superior and Municipal courts in the county and is posted in many courtrooms (a copy is available from the author).

169 See, *supra* end. 107.

170 Judge William Jones of Mecklenberg County, North Carolina (Charlotte) offers another judicial strategy. He makes a finding of "no reasonable efforts" for a specified period of time, orders the agency not to seek state or federal reimbursement dollars for the foster placement, and orders the agency to provide written proof that it has not sought such payment. This technique emphasizes to the agency the direct relationship between the failure to provide reasonable efforts and the loss of federal monies supporting foster children. Letter and notes from Judge William Jones to Judge Leonard Edwards (March 14, 1994) (a copy is available from the author). Judge Leslie C. Nichols of the Santa Clara County Superior Court has utilized a different strategy. A drug addicted mother voluntarily turned her young child over to the Department of Family and Children's Services (DFCS) and dependency proceedings were initiated. It was clear to the DFCS worker and Judge Nichols that outpatient treatment would not be sufficient to rehabilitate the mother and that residential treatment would be necessary. He ordered a 30-day review hearing to hasten the DFCS's effort to find such a placement. When the agency reported that no free program was available, Judge Nichols ordered the agency to pay for residential treatment. If they failed to do so, he told them he would find that they had not provided reasonable efforts to the mother. Shortly thereafter the DFCS reported they had been able to place the mother. They said that they had moved her to the top of a waiting list. Judge Nichols reported that his hard-line approach works on a case-by-case basis but has its limitations when larger, system shortages are the issue. This strategy was recounted in Judge Peggy Hora, et al., "The Legal Community's Response to Drug Use During Pregnancy in the Criminal Sentencing and Dependency Contexts: A Survey of Judges, Prosecuting Attorneys, and Defense Attorneys in Ten California Counties," *Southern California Review of Law and Women's Studies*, Vol. 2, No. 2, Spring 1993, at 527-575, 557.

171 Judge Richard FitzGerald of Louisville, Kentucky, refers to state plans as works of fantasy belonging in the fiction section of local book stores. So few state plans have been presented in court proceedings nationwide that his statement cannot be verified.

172 Suter, *supra* end. 79.

173 *Id.* at 1369, n. 12. See also, 42 U.S.C. § 672(a) (1989).

174 *That's the one beauty of this damned system. If he's really serious about it, a judge can say, "This is the service I want, and county, you provide it." This then gives the county the leverage to go to the Board of Supervisors and say, "This is mandated; it's on the books, you have to fund it." Either way, the judges are going to do that, or someone's going to bring a class action suit.*

This was a statement by Elsa ten Broeck, then a social services administrator in San Mateo County, California, as quoted by Claudia Morain in "Making Foster Care Work," *California Lawyer*, January 1984, at 27.

175 Joan Barthel, *For Children's Sake: The Promise of Family Preservation*, (Edna McConnell Clark Foundation, New York) 1992, at 67-77.

176 The role of the juvenile court judge combines judicial, administrative, collaborative, and advocacy components. Edwards, *supra* end. 112, at 25. See also, Rule 24, *supra* end. 122.

177 Edwards, *supra* end. 112, at 41.

178 Id., at 40-41.

179 "Foster Care in San Francisco," 1993-1994 Civil Grand Jury, City and County of San Francisco, 1994, at 5.

Superior Court
State of California

Santa Clara County Superior Court Building
191 North First Street
San Jose, California 95113
(406) 299-3949

Chambers of
Leonard P. Edwards, Judge

December 6,1989

Richard O'Neil, Director
Department of Family
and Children's Services
55 West Younger
San Jose, California 95110

Dear Dick:

I am writing to explain why the Juvenile Court Judicial Officers have made several "no reasonable efforts" findings in the past few months and what I believe the findings mean to the Department and the County. I believe these issues are novel and deserving of some detailed explanation.

As you know, pursuant to both state and federal law, the Court is required to make reasonable efforts findings at almost every stage of a dependency action. Reasonable efforts refers to those actions which the Department would reasonably be expected to take to enable children to remain safely at home before they are placed in foster care. It also refers to those actions the Department would reasonably make to reunite foster children with their biological parents.

Two issues have recently resulted in findings of no reasonable efforts. The first is the failure of the Department to provide a placement for teenage mothers and their babies. The second is the failure of the Department to provide intensive in-home services to enable drug abusing mothers and their drug exposed babies to be placed together in the community.

In each of these types of cases, the Social Workers who appear in my court are working hard to prevent the removal of children and to provide services to facilitate reunification. They are, however, unable to provide the services on the scale to which I refer. Instead, they report to me in court that they have looked everywhere, that these services do not exist and that, as a result, the baby must be removed from the mother's care.

These are cases in which everyone in the courtroom agreed that the baby and mother should be together and, but for the lack of resources, they would be placed with one another. Moreover, everyone agreed that the provision of these services was reasonable under the circumstances. Indeed, these services have been widely discussed in Santa Clara County as being a necessary part of the effective support of children and families in the County. They are available in many counties both in and out of California.

The finding of "no reasonable efforts" in these cases is important for several reasons. First, it is an indication that certain specified services were all that were necessary to retain a child with a parent. Second, it means that, given the circumstances of the County, the services are not extraordinary or unreasonable. Third, it may mean the Department will be unable to complete permanency planning for the child. Without a finding of "reasonable efforts," the termination of parental rights may not be legally possible. See Welfare and Institutions Code Section 366.22. Finally, the finding means that the Department cannot be reimbursed for the costs of a child's out-of-home care. See 42 U.S.C. Sections 671(a) (15) and 672 (a) (1).

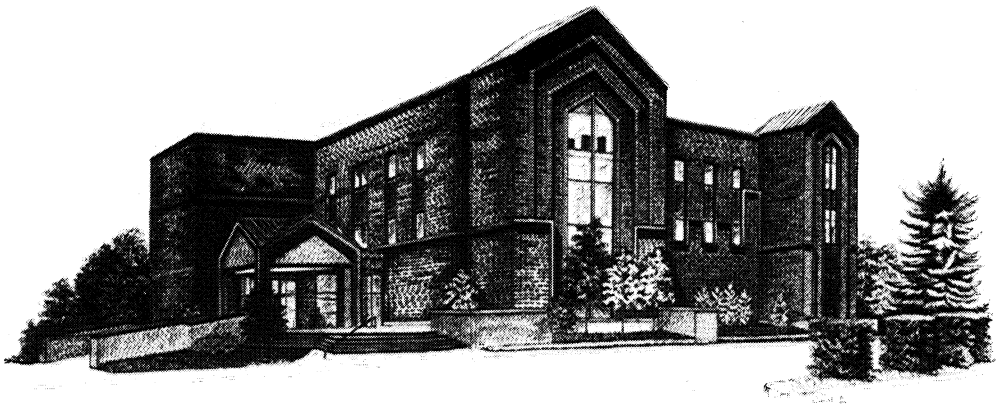
Pursuant to my duties as Juvenile Court Judge, I am advising you of the consequences of a no reasonable efforts finding and hoping that by working with the Board of Supervisors you will be able to take steps to ensure that such services are available to the children and families in Santa Clara County. Of course, I will do whatever I can to assist you in your efforts.

Thank you for your consideration and attention to this important problem. I look forward to hearing from you about its resolution.

Sincerely yours,

LEONARD EDWARDS
Presiding Judge, Juvenile Court

LE: hd
cc: Board of Supervisors
County Executive
Presiding Judge, Superior Court
Superior Court Juvenile Court Committee
County Counsel
District Attorney
Public Defender
Chief Probation Officer
Federal Compliance Officer



The National Council of Juvenile and Family Court Judges has been in the forefront of addressing juvenile justice and family law issues since 1937. The NCJFCJ brings together the nation's jurists to provide direction on the course of juvenile and family law. Through its National College of Juvenile and Family Law, the NCJFCJ serves as the country's leader in policy development and continuing education opportunities for judges involved with children, youth and families.

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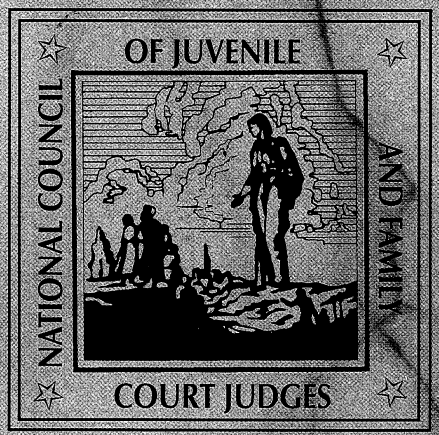

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